



# Ohio Legislative Service Commission

## Final Analysis

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**Sens.** Lehner (by request), Bacon, Eklund, Hite, Jones, LaRose, Niehaus, Sawyer, Turner, Wagoner

**Reps.** Stebelton, Roegner, Newbold, Amstutz, Beck, Brenner, Buchy, Hayes, Maag, Terhar, Uecker, Batchelder

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## I. EDUCATION PROVISIONS

### Third-grade reading guarantee

#### Retention

- Directs the State Board of Education to determine, and annually raise until at the "proficient" score, the score on the third-grade English language arts achievement assessment below which third-grade students generally must be retained in grade level.
- Beginning with the 2013-2014 school year, generally prohibits school districts and community schools from promoting to fourth grade a student scoring in the range designated by the State Board on the third-grade English language arts achievement assessment, but makes exceptions for students in specific circumstances.

## **Diagnostic and intervention services**

- Beginning in the 2012-2013 school year, requires each district and community school annually to assess the reading skills of each student in grades K to 3 by September 30 and identify students reading below grade level.
- Requires each district and community school to develop a reading improvement and monitoring plan for each student in grades K to 3 who is identified as reading below grade level.
- Requires each district and community school to report to the Department of Education any information requested by the Department about the reading improvement and monitoring plans.
- Requires each district and community school to assign each student who has a reading improvement and monitoring plan, and who enters third grade in the 2013-2014 school year or later, to a teacher who either (1) has received a passing score on a rigorous test of principles of scientifically based reading instruction or (2) has a reading endorsement on the teacher's license.
- Specifies services that districts and community schools must provide for each student retained in third grade, including not less than 90 minutes of reading daily, a high-performing teacher, and the option to receive services from other providers screened by the district, school, or Department.
- Includes summer reading camps as an option for services offered to retained third graders, but eliminates the requirement of prior law that summer remediation be provided in a school or community center and not on an at-home basis.
- Requires districts and community schools to provide retained third graders with instruction in other specific academic fields that is commensurate with their achievement levels.

## **Reports**

- Explicitly requires districts and community schools to submit results of the K-3 diagnostic assessments in English language arts and math to the Department and allows the Department to issue a report on the data collected.
- Requires each district and community school annually to report to the Department on its implementation of and compliance with the third-grade reading guarantee requirements.

- Requires the Superintendent of Public Instruction annually to report to the Governor and General Assembly the number and percentage of students in grades K to 4 reading below grade level, types of intervention services provided, and an evaluation, if available, of the efficacy of those services.
- Requires the Superintendent of Public Instruction and the Governor's Director of 21st Century Education, by December 31, 2012, to report on the Department's ability to reprioritize state and federal funds to support the assessments and interventions associated with the third-grade reading guarantee.
- Requires the State Board and the Early Childhood Advisory Council, in consultation with the Governor's Office of 21st Century Education, jointly to submit legislative recommendations on the state's policies on literacy education of children from birth to third grade by February 28, 2013.
- Requires the State Board to recommend to the General Assembly by December 31, 2013, changes to the scoring ranges of the state achievement assessments necessary for successful implementation of the common core curriculum and assessments in the 2014-2015 school year.

### **Promotion and retention policy**

- Requires community schools, in the same manner required of school districts, to adopt a promotion and retention policy that, at a minimum, generally prohibits the promotion of a student who has been truant for more than 10% of the school year and has failed at least two required subjects.

### **Digital and blended learning**

- Requires the State Board of Education to revise its minimum operating standards to include standards for the operation of blended learning by school districts and chartered nonpublic schools.
- Requires school districts, community schools, STEM schools, public college-preparatory boarding schools, and chartered nonpublic schools that operate a blended learning school, or plan to cease operating one, to notify the Department of Education by July 1 of the school year for which the change is effective.
- Permits a school district, community school, or STEM school already operating a blended learning program to notify the Department by December 23, 2012, and request classification as a blended learning school.
- Specifies that an "e-school" is not a blended learning school.

- Requires the Department, whenever the State Board adopts new state academic standards or model curricula, to provide information on the use of blended or digital learning in the delivery of the standards or curricula to students.
- Expands eligibility to receive a fee waiver for an advanced placement or postsecondary course taken through the OhioLearns Gateway to include students of chartered nonpublic schools and students who are instructed at home, in addition to public school students.

### **Academic content standards and model curricula**

- Requires the Superintendent of Public Instruction to present updated academic standards and model curricula in English language arts, math, science, and social studies to the House and Senate Education committees at least 45 days before their adoption by the State Board of Education.
- Directs the State Board, by June 30, 2013, and in consultation with the Governor's Office of Workforce Development, to adopt model curricula for grades K to 12 that "embed career connections learning strategies into regular classroom instruction."

### **Career-technical report cards and rankings**

- Requires the State Board of Education, in consultation with the Chancellor of the Board of Regents, the Governor's Office of Workforce Development, and several associations, to develop a report card for joint vocational school districts and career-technical planning districts that is separate from those for city, exempted village, and local school districts.
- Removes joint vocational school districts from the Department of Education's annual ranking of public schools.
- Removes measures related to career-technical education from the criteria with which the Department ranks public schools performance.

### **Reports of district and school spending**

- Moves from July 1, 2012, to December 31, 2012, the deadline for the State Board of Education to adopt standards for determining and comparing district and school operating expenditures for classroom instructional purposes with those for nonclassroom purposes.
- Establishes July 1, 2013, as the date that school districts, community schools, and STEM schools must begin reporting data in accordance with the State Board's standards.

- Requires the Department of Education, when developing the expenditure standards, to align them with the expenditure categories required for reporting to the U.S. Department of Education under federal law.
- Eliminates a requirement that the first report, ranking school districts and schools according to classroom and nonclassroom operating expenditures, cover fiscal years 2008 through 2012.

### **School restructuring**

- Requires that a "parent trigger" restructuring petition under the Columbus pilot program be filed by December 31 of the school year in which a school qualifies for restructuring.
- Specifies that the provisions of a parent restructuring petition prevail over the statutory restructuring provisions for low-performing schools, if a Columbus school district school becomes subject to both, unless the parent petition is rejected for certain reasons.
- Specifies that federal law prevails if either the parent restructuring petition or the state's general restructuring plan for a public school conflicts with federal law.
- Specifies that if a school is restructured under a parent restructuring petition, under the general restructuring plan, by a district academic distress commission, or under federal law, the school does not have to restructure again under state law for three years after implementation of the prior restructuring.

### **Teacher evaluations**

- Specifies that the public school teachers who are subject to the requirement in continuing law to undergo evaluation by their employers are those teachers who (1) are employed under a teacher license, (2) spend at least 50% of their time employed providing student instruction, and (3) are not substitute teachers.
- Authorizes to conduct teacher evaluations (1) administrative specialists, (2) persons designated by an agreement entered into by the teacher's employer, and (3) persons employed by an entity hired by the employer to conduct evaluations and who are a superintendent, assistant superintendent, principal, vocational director, supervisor, or administrative specialist or are qualified to do evaluations.
- Requires all authorized evaluators to obtain a credential established by the Department of Education before doing teacher evaluations.

- Reduces from two to one the number of annual evaluations an employer must conduct for a teacher who does not have a continuing contract (tenure) and whom the employer is considering not rehiring for the next school year.
- Requires a minimum of three classroom observations (instead of two, as formerly required) as part of the evaluation process for nontenured teachers who are under consideration for contract nonrenewal.
- Permits an employer to require only one classroom observation of a teacher rated as "accomplished" on the teacher's most recent evaluation, if the teacher completes a project approved by the employer to demonstrate continued growth and practice at the accomplished level.
- Specifies that, when calculating student academic growth for the purpose of evaluations, students who have 60 or more unexcused absences for the school year must be excluded from the calculation.
- Extends from April 1 to May 1 the deadline for employers to complete teacher evaluations.
- Specifies that the statutory requirements regarding teacher evaluations prevail over collective bargaining agreements entered into on or after the act's effective date.
- Allows the State Board of Education to periodically update its state framework for evaluating public school teachers.
- Directs the State Board, by June 30, 2013, to develop a standards-based teacher evaluation framework for state agencies, and requires each state agency that employs teachers to adopt a teacher evaluation policy that conforms to the framework.
- Requires each school district's evaluation procedures for assistant principals to be based on principles comparable to the district's teacher evaluation policy, but tailored to the duties and responsibilities of assistant principals.
- Requires the Chancellor of the Board of Regents annually, beginning in 2014, to report the number and percentage of graduates of each Ohio teacher preparation program who were rated at each of the four performance levels on evaluations conducted by their employers in the previous school year.
- Requires each employer to report to the Department of Education, for purposes of the Chancellor's report, the number of teachers receiving each evaluation rating,

aggregated by the teacher preparation program from which they graduated and graduation year.

### **Testing teachers**

- Revises the circumstances triggering the requirement that certain teachers of core subject areas take exams to prove their knowledge, so that it applies to teachers employed by school districts when the teacher has been rated "ineffective" on evaluations for two of the three most recent years. (Retains the law applying the requirement to teachers employed by community schools and STEM schools when the teacher's building is ranked by performance index score in the lowest 10% of all public schools.)
- Eliminates the exemption from the exam requirement for teachers employed by joint vocational school districts.
- Specifies that the exam requirement first applies in the 2015-2016 school year.
- Applies the exam requirement to teachers who are *currently* teaching a core subject when they become subject to the provision.
- Specifies that the exams that teachers must take are content knowledge exams selected by the Department of Education to determine expertise to teach the teacher's subject area and grade level (rather than content knowledge and pedagogy exams needed for licensure in that subject area and grade level, as in prior law).
- Requires school district teachers who pass the exams to pay for professional development targeted at their deficiencies, and permits districts to terminate teachers for (1) failure to complete the professional development or (2) receipt of an "ineffective" rating on the next evaluation after the professional development.

### **Teacher and administrator contracts and benefits**

- Extends the deadlines for a school district or educational service center (ESC) to notify a teacher or administrator that the person's contract will not be renewed for the following school year, from (1) April 30 to June 1, in the case of teachers, and (2) March 31 to June 1, in the case of most administrators.
- Extends from June 1 to June 15 the deadline for a teacher or administrator to notify a school district or ESC that the person is declining reemployment, in cases where the person is automatically reemployed due to the district's or ESC's failure to comply with the statutory nonrenewal procedures.

- Extends from April 30 to June 1 the deadline by which a school district employee must be notified of nonrenewal in order for the person to qualify for unemployment benefits.
- Exempts school district employees from accruing sick leave under the Public Employee Personnel Law, if they are (1) substitutes, (2) adult education instructors scheduled to work less than 120 days in the school year, or (3) employed on an as-needed, seasonal, or intermittent basis.

### **Scholarship programs**

- Requires the State Board of Education to adopt rules establishing procedures for awarding Educational Choice (Ed Choice) scholarships to students already attending a nonpublic school at the time the school is granted a charter.
- Qualifies a student in a newly chartered school for a scholarship if the student (1) either (a) currently would be assigned to a district school whose students qualify for Ed Choice scholarships or (b) attended, or would have been assigned to, such a school immediately prior to enrolling in the newly chartered school, and (2) was not enrolled in another nonpublic school immediately prior to enrolling in the newly chartered school.
- Requires the Department of Education to hold a second Ed Choice application period for the 2012-2013 school year to enable students enrolled in nonpublic schools that received a charter in the 2011-2012 school year to apply.
- Specifies that, in the case of a child placed in the custody of either a government agency or a person other than the child's parent, the school district that includes the child in its average daily membership, for funding purposes, is the district from which Ed Choice scholarship payments must be deducted.
- Requires the Department, when publishing achievement assessment data for students participating in the Ed Choice or Cleveland Scholarship Program, to disaggregate that data by grade (instead of age, under prior law).
- Specifies that, whenever a school district evaluates a child with a disability or develops, reviews, or revises the child's individualized education program (IEP), the district must notify the child's parent about the Autism Scholarship Program and the Jon Peterson Special Needs Scholarship Program.

## **Closure of dropout recovery community schools for poor performance**

- Specifies that, unless the General Assembly enacts by March 31, 2013, (1) performance standards, (2) a report card rating system, and (3) closure criteria for community schools that operate dropout prevention and recovery programs, those schools are subject to permanent closure under the existing criteria that applies to other community schools.
- Specifies that only the performance ratings issued to schools that operate dropout programs for the 2012-2013 school year and later count in determining if a school meets the closure criteria.

## **Community school sponsorship**

- Specifies that the Department of Education's Office of Ohio School Sponsorship must be included in the annual rankings of community school sponsors, which is used to determine if entities may sponsor additional schools, but excludes the Office from the prohibitions on sponsoring additional schools based on the rankings.
- Makes permanent the exclusion from the sponsor ranking calculations of community schools that primarily serve students with disabilities.
- Excludes from the sponsor ranking calculations any community school that has been in operation for less than two full school years.
- Replaces the prior conditional exclusion from the sponsor ranking calculations of community schools that operate dropout prevention and recovery programs with a new requirement that the Department include those schools in the calculation of sponsor rankings, if the schools become subject to the involuntary closure criteria, in the event that the General Assembly does not enact performance standards, a report card rating system, and closure criteria for those schools by March 31, 2013.
- Requires the Department to publish the annual sponsor rankings between October 1 and October 15.
- States the General Assembly's intent to enact a law by December 31, 2012, that establishes a battery of measures to rate the performance of the sponsors of community schools and to determine whether an entity may sponsor additional community schools.
- Updates the definition of "sponsor," for purposes of the community school laws, to explicitly include (1) boards of school districts and educational service centers that agree to the conversion of a school or building and (2) "grandfathered" sponsors,

which are exempt from having to obtain the Department's approval to sponsor community schools.

- Authorizes the Department to deny an application for direct authorization submitted by an existing community school, if the school's previous sponsor had elected not to renew the school's sponsorship contract.
- Designates the Office of Ohio School Sponsorship as the entity within the Department that may assume sponsorship of a community school whose sponsor is found noncompliant with state rules or its contract with the community school.

### **Community school enrollment verification**

- Requires school districts to conduct monthly enrollment reviews for community school students who are entitled to attend school in the district to verify the community school in which the student is enrolled and that the district is the student's resident district.
- Authorizes a community school, for purposes of its initial reporting of students' resident school districts, to adopt a policy prescribing the number of documents required to verify a student's residency, and specifies that the policy supersedes any similar policy of the student's resident district.
- Specifies the documents that may serve as proof of a parent's or student's primary residence.
- Codifies Department of Education policy that "the school district in which a parent or child resides is the location the parent or student has established as the primary residence and where substantial family activity takes place."
- Requires a community school, in the event of a dispute with a school district over where a student resides, to provide the district with documentation of the student's residency and to make a good faith effort to identify the student's correct residence.
- Allows a community school to appeal to the Superintendent of Public Instruction to resolve a dispute under certain conditions.

### **Other community school provisions**

- Increases from two to five the number of governing authorities of start-up community schools on which a person can serve at the same time.
- Authorizes the governing authority of a community school to establish a single-gender school without establishing a comparable school for the other gender.

- Revises an uncodified law to permit, rather than prohibit, a community school from operating from or in a residential care facility.
- Requires the Department of Education to make available on its web site a copy of every approved community school contract filed with the Superintendent of Public Instruction.

### **Access to school district real property**

- Expands the right of first refusal to purchase real property that a school district is disposing of to include a public college-preparatory boarding school located in the district, in addition to community schools in the district under continuing law.
- Extends to a public college-preparatory boarding school, in addition to community schools under continuing law, the opportunity to purchase or lease unused real property of the school district in which it is located.
- Permits, but does not require, a school district when it offers unused real property for sale or lease to community schools located in the district also to make that offer to community schools with plans (1) to relocate operations to the district or (2) to add facilities that will be located in the district.
- Specifies that if a district must conduct an auction or lottery to select a community school or public college-preparatory boarding school to purchase or lease its property, the auction or lottery must be conducted only among the parties that notified the district of their interest, instead of among all eligible parties as required under prior law.
- Stipulates that the fair market value of real property that a district offers for sale or lease to community schools or a public college-preparatory boarding school must be based on an appraisal that is not more than one year old.
- Authorizes school districts to sell real and personal property directly to private, nonprofit institutions of higher education and to chartered nonpublic schools (in addition to public colleges and universities and other public entities under continuing law) without holding a public auction, subject to the right of first refusal of community schools and a public college-preparatory boarding school.

### **College-preparatory boarding school governance**

- Allows a member of the board of a public college-preparatory boarding school to be removed from the board at any time by the person or body (the Governor, the school's operator, or other person or body) that appointed the member.

- Requires members of the board of a public college-preparatory boarding school to file disclosure statements with the Ohio Ethics Commission.

### **STEM schools**

- Authorizes the STEM Committee to approve the establishment of a group of STEM schools to operate from separate facilities in one or more school districts under the direction of a single governing body that is not a school district board of education.
- Allows the governing body of a group of STEM schools to employ a single chief administrative officer for multiple schools in the group and to employ a single treasurer for the entire group of schools.
- Requires the Department of Education to calculate state funding for each STEM school within the group separately and to pay that funding directly to the schools.
- Requires the Department to issue a report card for the group of STEM schools as a whole, in addition to individual report cards for each school in the group, as required by continuing law.
- Specifies that, for state classroom facilities funding from the Ohio School Facilities Commission, the governing body of a group of STEM schools must submit a proposal for each school in the group separately, and the Commission must consider each proposal individually.
- Authorizes the STEM Committee to approve the establishment of STEM schools to serve only gifted students.
- Permits STEM schools, and STEM programs awarded grants by the STEM Committee, to restrict student participation based on intellectual ability or other measures of achievement or aptitude, if the schools or programs serve only gifted students.

### **Educational service centers**

- Permits a school district with more than 16,000 students that enters into an agreement with an educational service center (ESC) for services for which the state provides per-pupil funding, to opt out of receiving and paying for supervisory teachers.
- Eliminates the annual July 1 deadline by which a fee-for-service agreement between an ESC and a school district must be filed with the Department of Education.

- Permits an ESC providing services for a child in the custody of a county or district juvenile detention facility to submit the bill directly to the school district responsible for paying the cost of educating that child, instead of first billing the district in which the facility is located.

### **Early admittance to kindergarten or first grade**

- Replaces the statutory standards governing early admittance to kindergarten and first grade with a general requirement that school districts admit younger students to those grades in accordance with their own, state-approved acceleration policies.
- Authorizes community schools to admit students younger than age five in accordance with the act's new standard for early admittance to kindergarten and first grade by school districts.
- Prohibits a school district from denying a transferring student admission based on the student's age, if the student had been admitted to kindergarten by another school district or a chartered nonpublic school.

### **Licensing of preschool and latchkey programs**

- Eliminates the requirement that a school district, county DD board, or chartered nonpublic school operating a preschool or latchkey program renew its license every two years.
- Specifies that a preschool or latchkey program's license remains valid until revoked by the Department of Education or the program ceases operations.
- Extends the length of the provisional license issued to a new preschool or latchkey program from six months to one year.
- Requires the Department to inspect each preschool and latchkey program annually to determine if it is in compliance with applicable laws and rules, and to notify the program of the inspection results.
- Eliminates the requirement that a preschool or latchkey program's license contain the name of the program's administrator, the program's address of operation, and the toll-free number to report suspected violations of the law by the program.

### **Reporting data of young children**

- Requires each state agency that administers programs for children younger than compulsory school age to obtain for each child receiving services a student data verification code (also called a "Statewide Student Identifier" or "SSID") issued under

the Department of Education's "Education Management Information System" (EMIS).

- Requires the EMIS contractor to submit to the Department of Education the SSID code of a child younger than compulsory school age receiving services from another state agency.
- Requires state agencies to submit to the Department of Education information regarding children younger than compulsory school age receiving services from the agency using their SSID codes.
- Provides that personally identifiable information of children younger than compulsory school age maintained in EMIS or an agency's files is not a public record.

### **Body mass index screening; sale of beverages**

- Makes optional the screening of students for body mass index (BMI) and weight status category in school districts, community schools, STEM schools, and chartered nonpublic schools, eliminating the requirement that districts and schools obtain a state waiver to opt out of conducting the screening.
- Exempts the sale of milk from the requirement that at least 50% of beverages available for sale from school food service programs, vending machines, or school stores consist of water or other beverages that contain no more than 10 calories per 8 ounces.

### **School facilities programs**

- Requires that each segment of a school district's project under the Classroom Facilities Assistance Program (CFAP) be of such size that the district's portion of the cost of that segment is at least 2% of its tax valuation, instead of 4% as under prior law.
- Removes conditions of land-area size (300 square miles) and wealth (75th percentile or lower) for participation in the Exceptional Needs School Facilities Assistance Program, thus permitting all districts to receive funding under the program.
- Authorizes the School Facilities Commission to offer early CFAP funding to Expedited Local Partnership school districts.

## Miscellaneous education provisions

- Specifies that a school district's "state education aid" for fiscal years 2012 and 2013 includes both its supplemental guarantee payment and its payment for high academic performance, if either is paid to the district.
- States that the legislative authority enacting a tax increment financing (TIF) resolution must notify a joint vocational school district of the pending TIF legislation according to the same time requirements that apply to other school districts.
- Requires the Department of Education annually to notify each school district and community school of the requirement of continuing law that students with disabilities undergo a comprehensive eye exam, and requires the Department to issue a report by December 31, 2013, on districts' and community schools' compliance with this requirement.
- Requires each school district, community school, STEM school, and public college-preparatory boarding school, during the admissions process, to provide the parent of a student a copy of the school's most recent report card.
- Includes "law enforcement emergencies" within the description of "calamity day" for which a school may be closed.
- Allows college and university students under age 21 to possess or consume beer or intoxicating liquor in a culinary, food service, or hospitality course under the supervision of the course instructor, if the students are required to taste and expectorate the beer or intoxicating liquor.
- Directs the Department of Education, by June 20, 2013, to conduct a study of the licensure requirements for media specialists and to use the study to make necessary revisions to those requirements.
- For the 2012-2013 school year, extends from 60 to 75 days after administration of the state achievement assessments the deadline to report individual scores to school districts, but specifies that scores must be reported by June 15, 2013.
- Repeals the requirement that the State Board of Education hold regular meetings every three months, and instead (1) requires the Board to adopt a calendar for regular meetings annually by March 31 for the following fiscal year, and (2) allows the President or the President's designee to notify Board members of special meetings via electronic or regular mail.

## Third-grade reading guarantee

(R.C. 3301.0710 and 3313.608; Section 267.10.90 of H.B. 153 of the 129th General Assembly; and Section 265.20.15 of H.B. 1 of the 128th General Assembly (repealed))

### Overview

The act establishes a multi-year approach to revising the third-grade reading guarantee. Since the 2003-2004 school year, the third-grade guarantee has established standards for school districts and community schools<sup>1</sup> to identify and assist students in third grade and below who have reading difficulties. Strategies include the possibility of retaining a student in third grade for further reading instruction, or promoting the student to fourth grade accompanied by intensive intervention services. The act's changes can be categorized as follows:

(1) It requires the State Board of Education to determine, and annually raise, the "cut" score that will trigger the third-grade retention requirement. The act instructs the State Board to continue to raise the cut score until it equals the "proficient" score.

(2) Beginning with the 2012-2013 school year, it revises and adds new requirements with respect to diagnosing the reading skills of students in grades K to 3 and providing academic intervention to students determined to be reading below grade level. Students in grades K to 3 must be assessed annually and intervention services, structured by a reading improvement and development plan, must be provided to those identified as reading below grade level.

(3) Beginning with the 2013-2014 school year, the act revises the requirements for retaining in third grade students who score below the cut score on the state achievement assessment in English language arts. Retention in third grade will be required generally, with exceptions for students in specific circumstances. Reading intervention services must be provided to students who are retained in third grade.

### "Cut" score

(R.C. 3301.0710 and 3313.608(A); Section 267.10.90 of H.B. 153 of the 129th General Assembly)

The act changes the score on the third-grade English language arts achievement assessment below which a student may be prevented from being promoted to fourth grade. Where prior law designated the lowest range of scores, known as the "limited"

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<sup>1</sup> The third-grade guarantee is applied to community schools by R.C. 3314.03(A)(11)(d).

score, as the "cut" score, the act now requires the State Board of Education to determine the cut score annually. The State Board must adjust the score upward each year until the retention requirement applies to students who do not receive at least a "proficient" score. This change commences with the 2012-2013 school year, but the act's language might not be clear as to whether the State Board must first raise the score for that year or for the following year, when the act's new retention requirements first apply (see below). But the act prohibits the State Board from designating a score lower than "limited" as the initial cut score.

Not later than December 31, 2013, the State Board must submit to the General Assembly recommended changes to the scoring ranges of the state achievement assessments necessary for the successful implementation of the common core curriculum and assessments in the 2014-2015 school year.

### **Retention in third grade**

(R.C. 3313.608(A)(2))

Beginning with students entering third grade in the 2013-2014 school year, the act generally prohibits school districts and community schools from promoting to fourth grade a student scoring in the range designated by the State Board on the third-grade English language arts achievement assessment, but makes several exceptions. The exceptions are:

(1) Limited English proficient students who have been enrolled in U.S. schools for less than two full school years and have had less than two years of instruction in an English as a second language program;

(2) Special education students (a) whose individualized education programs (IEPs) exempt them from retention under the third-grade guarantee or (b) whose IEPs or 504 Plans show that they have received intensive remediation in reading for two school years and have previously been retained in any of grades K to 3, but who still demonstrate a deficiency in reading;

(3) Students who demonstrate an acceptable level of performance on an alternative standardized reading assessment as determined by the Department of Education;

(4) Students who received intensive remediation in reading for two school years but still demonstrate a deficiency in reading, and were previously retained in any of grades K to 3, as long as the student continues to receive intensive reading instruction in fourth grade. That instruction must include an altered instructional day that includes

specialized diagnostic information and specific research-based reading strategies that have been successful in improving reading among low-performing readers.

### **Diagnostic and intervention services**

#### **Annual diagnostic assessments in grades K to 3**

(R.C. 3313.608(B)(1) and (2)(a); conforming changes in R.C. 3301.0715)

Beginning in the 2012-2013 school year, the act requires each district and community school to adopt policies and procedures with which to assess the reading skills of each student in grades K to 3 by September 30 of each school year and identify students reading below grade level. To do so, schools must administer the state-developed diagnostic assessments in English language arts, or a comparable tool approved by the Department of Education, to all students. Each district or school must notify, in writing, the parent or guardian of each student identified as reading below grade level. Continuing law requires that the student's classroom teacher be involved in the assessment and identification, as well. The notice must inform the parent or guardian that the student has been identified as having a substantial reading deficiency, describe the current services provided to the student, describe the proposed supplemental services and supports that are designed to remediate the student's identified areas of reading deficiency, and explain that the student may be retained in third grade if the student scores below the State Board's cut score on the third-grade achievement assessment. However, the notice must also specify that the state achievement assessment is not the sole determinant of promotion and that additional assessments are available.

Immediately following identification of a reading deficiency, a district or community school must provide the student with intensive reading instruction, described below.

#### **Reading improvement and monitoring plans in grades K to 3**

(R.C. 3313.608(B)(2)(b), (C), and (F))

Upon identification of a reading deficiency of a student in grades K to 3, a school district or community school must provide the student with intensive reading instruction that must include (1) "intensive, explicit, and systematic instruction," (2) research-based reading strategies that have been shown to be successful in improving reading among low-performing readers, and (3) instruction targeted at the student's identified reading deficiencies. In providing the services, a district or community school must develop, with the involvement of the student's parent or guardian and classroom teacher, a reading improvement and monitoring plan for each student within

60 days of receiving the results of the student's diagnostic assessment. The plan must do all of the following:

- (1) Identify the student's specific reading deficiencies;
- (2) Describe the additional instructional services and support that will be provided to remediate the student's identified deficiencies;
- (3) Include opportunities for parental involvement in those services and support;
- (4) Specify a process for monitoring the student's receipt of the services and support;
- (5) Include a reading curriculum during regular school hours that (a) assists students to read at grade level, (b) provides scientifically based and reliable assessment, and (c) provides initial and ongoing analysis of each student's reading progress;
- (6) State that the student may be retained in third grade for failure to obtain the cut score on the third-grade achievement assessment.

Each school district and community school must report to the Department of Education any information requested by the Department about the reading improvement and monitoring plans.

### **Third-grade teachers**

(R.C. 3313.608(B)(3)(c) and (C))

The act establishes two requirements with respect to third-grade teachers. First, beginning immediately, it requires that every student who is retained in third grade be provided a "high-performing" teacher, as determined by the teacher's performance data (when that data is available) and performance reviews.

Second, it requires that each student who enters third grade after July 1, 2013, and who has a reading improvement and monitoring plan be assigned to a teacher who either (1) has received a passing score on a rigorous test of principles of scientifically based reading instruction or (2) has a reading endorsement on the teacher's license. This requirement applies to all third graders with a reading improvement and monitoring plan, whether the student is entering third grade for the first time or has been retained.

### **Remediation services for retained third graders**

(R.C. 3313.608(B)(3)(a) and (b), (B)(4), (E), and (F); conforming changes in R.C. 3313.813 and 3314.18)

In addition to its requirements with respect to teacher qualifications, the act requires each school district and community school to do all of the following for each student retained in the third grade under the guarantee:

(1) Provide intense remediation services until the student is able to read at grade level. Remediation must include "intensive, explicit, and systematic intervention." The services must include intensive interventions in reading that address the areas of deficiencies, including not less than 90 minutes of reading daily, and other optional strategies, such as small group instruction, reduced student-teacher ratios, more frequent progress monitoring, tutoring or mentoring, transition classes containing third- and fourth-grade students, extended school day, week, or year, or summer reading camps. (Under prior law, districts and community schools had to provide intense remediation services in the summer following third grade to students who scored in the "limited" range on the third-grade reading assessment. These summer services had to be conducted in a school building or community center and not on an at-home basis. The act makes summer services optional and removes the site requirement. However, it continues to require any summer remediation funded in whole or in part by the state to use methods based on "reliable educational research," student assessments before and after the program, and parental involvement in programming decisions.)

(2) Offer the option to receive services from other providers screened by the Department, district, or community school; and

(3) Establish a policy for mid-year promotion if the student demonstrates that the student is reading at or above grade level, and promote the student to fourth grade if the student demonstrates reading proficiency in accordance with standards adopted by the Department.

While assisting retained third graders with reading, the act also requires districts and community schools to provide them with appropriate instruction in other specific academic ability fields in which they have demonstrated proficiency. ("Specific academic ability field" means math, science, writing, or social studies.) Thus, third graders retained for reading remediation must still receive instruction in other academic fields that is commensurate with the student's achievement levels in those fields.

## **Diagnostic assessments – reporting results; blank copies**

(R.C. 3301.079(D)(1) and 3301.0715(C))

The act repeals the law that generally had prohibited the Department and the State Board from requiring school districts and community schools to report students' diagnostic assessment results to the Department or State Board or making the results available in any form to the public. Further, the act actually requires districts to submit the results of diagnostic assessments in English language arts and math to the Department and allows the Department to issue a report on the data collected. However, the act retains the stipulation that no district or school is required to report to the Department the results of any diagnostic assessment administered to a kindergarten student if the parent requests the district not to report those results.<sup>2</sup> It likewise retains continuing law generally prohibiting the release of information that would personally identify a student.<sup>3</sup>

The act also requires each district and school to provide each student's complete diagnostic assessment and assessment scores to the student's parent, instead of only at the parent's request under former law.

Finally, continuing law stipulating that blank copies of the diagnostic assessments adopted by the State Board are public records remains unchanged by the act.

## **Annual reports**

(R.C. 3313.608(D))

Under the act, each school district and community school must report annually to the Department on its implementation and compliance with the third-grade guarantee, using guidelines prescribed by the Superintendent of Public Instruction. The state Superintendent annually must report to the Governor and the General Assembly (1) the number and percentage of students in grades K to 4 reading below grade level, aggregated by school district and building, (2) the types of intervention service provided, and (3) an evaluation, if available, of the efficacy of those services.

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<sup>2</sup> R.C. 3301.0714(B)(1)(n).

<sup>3</sup> R.C. 3319.321, not in the act.

## **Report on federal funding**

(Section 733.40)

By December 31, 2012, the act requires the Superintendent of Public Instruction and the Director of the Governor's Office of 21st Century Education to report to the Governor and the General Assembly on the Department of Education's ability to reprioritize state and federal funds, in order to identify additional funds that may be used to support the assessments and interventions associated with the third-grade reading guarantee. The Superintendent and Director must examine all available sources of funding, including Title I federal funds for disadvantaged students, Title II(D) federal funds for educational technology, and Title III federal funds for limited English proficient students.

## **Legislative recommendations regarding reading readiness**

(Section 733.30)

The act requires the State Board of Education and the Early Childhood Advisory Council, in consultation with the Governor's Office of 21st Century Education, jointly to develop legislative recommendations on the state's policies on literacy education of children from birth to third grade. The joint recommendations are due to the Governor and the General Assembly by February 28, 2013.

The act states that the goal of the recommendations is "increasing kindergarten readiness, reading proficiency in kindergarten through third grade, and increasing school success and college- and career-readiness for Ohio's children." The recommendations must address:

- (1) Alignment of the state's policies and resources for reading readiness and proficiency from birth through third grade, including literacy standards, evidence-based curricula, professional development, instructional practices, and assessments to reduce early learning difficulties and to ensure third-grade reading proficiency;
- (2) Identification of strategies to reduce the kindergarten readiness gap, increase literacy success throughout the K-12 continuum, and increase college- and career-readiness; and
- (3) Recommendations for implementing reading proficiency strategies.

## **Promotion and retention policy**

(R.C. 3313.609 and 3314.03(A)(11)(d))

The act requires community schools to comply with the law requiring school districts to adopt a promotion and retention policy that prohibits the promotion of a student who has been truant for more than 10% of the school year and has failed at least two required subjects, unless the principal and teachers in the failed subjects agree that the student is academically prepared for the next grade. The act also specifies that each district's and community school's grade retention and promotion policy must comply with the third-grade reading guarantee.

## **Digital and blended learning**

(R.C. 3301.079 and 3302.41)

### **Definitions**

(R.C. 3301.079(J))

The act defines "blended learning" as "the delivery of instruction in a combination of time in a supervised physical location away from home and online delivery whereby the student has some element of control over time, place, path, or pace of learning." "Digital learning" is defined as "learning facilitated by technology that gives students some element of control over time, place, path, or pace of their learning."

### **Blended learning schools**

(R.C. 3302.41(A) and (C))

The act requires a school district, community school, STEM school, public college-preparatory boarding school, or chartered nonpublic school that elects either (1) to operate all or part of a school using a blended learning program, or (2) to cease operating a school using a blended learning program, to notify the Department of Education of that fact by July 1 of the school year for which the change will be effective. The act does not explicitly state whether establishing a blended learning program after the act's effective date without providing the notice is prohibited, or whether there are any consequences for failing to provide the notice of the establishment or termination of a blended learning program. A school district, community school, or STEM school that is already using a blended learning program on the act's effective date *may* notify the Department of that fact by December 23, 2012, and request classification as a blended learning school.

## **E-schools vs. blended learning schools**

The act also specifies that "internet- or computer-based community schools," commonly called "e-schools," are not blended learning schools, and that the act does not affect any provision of continuing law regarding e-school operations and state payments. Under continuing law, an e-school is a community school

"in which the enrolled students work primarily from their residences on assignments in nonclassroom-based learning opportunities provided via an internet- or other computer-based instructional method that does not rely on regular classroom instruction or via comprehensive instructional methods that include internet-based, other computer-based, and noncomputer-based learning opportunities."<sup>4</sup>

The continuing law prescribes a lower rate of state payment to e-schools (compared to so-called "brick and mortar" community schools and, presumably, community schools that will operate blended learning programs),<sup>5</sup> and imposes a number of unique mandates on them, including that they provide students with free computer hardware and software, including filtering software; that the student-teacher ratio cannot exceed 125:1; that students are limited to ten hours of learning opportunities per 24-hour period; and that the schools must withdraw students who fail to participate, without excuse, in the state achievement assessments for two consecutive years.<sup>6</sup>

### **State Board standards for blended learning**

(R.C. 3302.41(B))

The act requires the State Board of Education to revise operating standards for school districts and chartered nonpublic schools to include standards for the operation of blended learning. The operating standards must provide for:

- (1) Student-to-teacher ratios whereby no blended learning classroom "is required to have more than one teacher for every 125 students";
- (2) The extent to which the school is or is not obligated to provide students with access to digital learning tools;

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<sup>4</sup> R.C. 3314.02(A)(7).

<sup>5</sup> R.C. 3314.08.

<sup>6</sup> See R.C. 3314.21 to 3314.28, none in the act.

(3) The ability of students, at any grade level, to earn credits or advance grade levels upon demonstrating mastery of knowledge or skills through competency-based learning models. The act outright prohibits basing credits or promotion on a minimum number of days or hours in a classroom.

(4) An exemption from the 182-day state minimum school year and state minimum school day, as they apply to school districts and STEM schools (but apparently community schools operating blended learning programs must remain subject to the requirement to offer at least 920 hours of learning opportunities per year); and

(5) "Adequate provisions" for: the licensing and assignment of teachers, administrators, and other professional personnel; efficient and effective instructional materials and equipment; the proper organization and administration of schools, including regulations for preparing all necessary records and reports and the preparation of a statement of policies and objectives for each school; buildings and health and sanitary facilities and services; admission of students and requirements for promotion; requirements for graduation; and "other factors as the Board finds necessary."

The act's language describing the standards called for in (5) replicates language of continuing law detailing the State Board's mandate to "formulate and prescribe minimum standards to be applied to all elementary and secondary schools in this state for the purpose of requiring a general education of high quality."<sup>7</sup>

### **Information related to state academic standards and curricula**

(R.C. 3301.079(G))

The act requires the Department of Education, whenever the State Board adopts new state academic standards or model curricula, to provide schools with information on the use of blended learning or digital learning in delivering the standards or curricula to students. This information is to be provided at the time the Department notifies schools of the content of the new standards or curricula.

### **OhioLearns Gateway**

(Section 283.20 of H.B. 153 of the 129th General Assembly)

Under continuing law, public school students taking advanced placement or postsecondary courses through the OhioLearns Gateway may receive a fee waiver, if

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<sup>7</sup> R.C. 3301.07(D)(2), not in the act.

sufficient funds are available in the eTech Ohio Commission's GRF appropriation item 935409, Technology Operations. The act expands eligibility for the fee waivers to students of chartered nonpublic schools and students who are instructed at home. It does not change the appropriation amount for this line item.

OhioLearns is an online catalog of primary, secondary, and postsecondary courses, certificates, and degrees. To the extent that funding is available, eligible students may receive a fee waiver for one advanced placement or postsecondary course.

## **Legislative presentation of academic standards and model curricula**

(R.C. 3301.079(I); conforming change in R.C. 3301.0712)

Under the act, whenever the State Board of Education updates its academic content standards or model curricula for grades K to 12 in English language arts, math, science, and social studies, the Superintendent of Public Instruction must present the updated version to the House and Senate education committees. The presentation must occur at least 45 days before the State Board's formal adoption of the standards or curricula.

## **Model curricula for "career connection learning strategies"**

(R.C. 3301.079(B)(2))

The act directs the State Board of Education, by June 30, 2013, to adopt model curricula for grades K to 12 that "embed career connection learning strategies into regular classroom instruction." In developing the curricula, the State Board must consult with the Governor's Office of Workforce Development.

## **Career-technical report cards and rankings**

### **Report cards**

(R.C. 3302.033; conforming changes in R.C. 3302.03 and 3302.20(D))

The act requires the State Board of Education to approve a separate report card for joint vocational school districts and career-technical planning districts. A "career-technical planning district" is a school district or group of school districts that is designated by the Department of Education to be responsible for the provision of career-technical education services to students within the district or group.

In approving a new report card, the State Board must consult with (1) the Chancellor of the Board of Regents, (2) the Governor's Office of Workforce Development, (3) the Ohio Association of Career and Technical Education, (4) the Ohio

Association of Career-Technical Superintendents, and (5) the Ohio Association of City Career-Technical Schools. The State Board must submit details of the report card to the Governor, the Speaker of the House, the Senate President, and the chairpersons of the House and Senate Education committees. The Department of Education must begin issuing annual report cards for each joint vocational school district and career-technical planning district for the 2012-2013 school year, to be published by September 1, 2013.

### **Annual rankings of public schools**

(R.C. 3302.21)

The act also removes joint vocational school districts from the annual ranking of all school districts, community schools, and STEM schools required under continuing law. Further, it removes from the criteria for ranking districts and schools performance measures related to career-technical education.

### **Reports of district and school spending**

(R.C. 3302.20, 3302.21, and 3302.25)

Law enacted in 2011 by H.B. 153 requires the Department of Education to develop and adopt standards for determining, from the existing data reported under the Education Management Information System (EMIS), the amount of annual operating expenditures for (1) classroom instructional purposes and (2) nonclassroom purposes, for each school district, community school, and STEM school. Those standards, then, and the existing EMIS data are to be used by the Department to rank order districts and schools by classroom and nonclassroom expenditures and to implement other programs and reports. The act changes the deadlines for development and implementation of the standards and makes other changes regarding the programs that will use them, as follows:

(1) The act delays the date by which the State Board of Education must adopt a final set of expenditure standards from July 1, 2012, to December 31, 2012. It also eliminates the deadline (January 1, 2012, under prior law) by which the Department must present the standards to the State Board. Thus, presumably, the Department must deliver the standards to the State Board within a reasonable amount of time for the State Board to adopt a final set of standards before its December 31, 2012, deadline.

(2) The act requires the Department, in developing the expenditure standards, to align them with the expenditure categories required for reporting to the U.S. Department of Education under federal law.

(3) The act specifies that school districts, community schools, and STEM schools must begin reporting data in accordance with the standards on July 1, 2013. It also eliminates the requirement enacted by H.B. 153 that the first expenditure report based on the new standards include each district's and school's classroom and nonclassroom spending for fiscal years 2008 through 2012.

(4) Finally, separate law, also enacted by H.B. 153, required an additional annual report comparing a school district's instructional expenditures to its administrative expenditures. The act changes this provision to align it with the other provision so that the comparison is of expenditures for "classroom instructional purposes" (instead of just "instructional purposes" as under current law) with expenditures for "nonclassroom purposes" (instead of "administrative purposes" as under current law).

### **School restructuring**

(R.C. 3302.042 and 3302.12)

The act adds several specifications to two provisions enacted in 2011 by H.B. 153 to restructure low-performing public schools: (1) a pilot program allowing parents of students enrolled in a Columbus City School District building that has been ranked in the bottom 5% of all public school buildings for three consecutive years to petition the district for reforms, and (2) a general restructuring requirement that applies if a district school is ranked for three consecutive years in the lowest 5% of all public school buildings according to performance index score, and the school also has a performance rating of academic watch or academic emergency.

The act clarifies that if a Columbus School District school is required to restructure under both provisions, the provisions of the petition filed by parents and verified by the school district treasurer prevail over the general restructuring requirements. This is the case unless the petition is denied because one of the following applies: (1) the district board determines that the petitioners' request is for reasons other than improving student achievement or safety, (2) the Superintendent of Public Instruction determines that the reform would not comply with the Department of Education's Model of Differentiated Accountability, which establishes sanctions for chronically underperforming districts and schools as required by the federal No Child Left Behind Act, or (3) the petition requests the Department of Education to take over the school and the Department has not agreed to do so. In such cases, the school must be restructured under the general restructuring provision.

The act also clarifies that federal law prevails over both restructuring programs in the case of any conflict with federal requirements, and that if a school is restructured under the Columbus School District pilot project, the general low-performing school

provision, a school district's academic distress commission,<sup>8</sup> or federal law, that school is not required to restructure again for three consecutive years after the implementation of the prior restructuring.

Finally, the act requires that a parent petition to restructure a Columbus School District-run school be filed by December 31 of any school year in which the school qualifies for restructuring.

## **Teacher evaluations**

(R.C. 3319.111 and 3319.112)

The act makes several changes to the procedures for doing performance evaluations of public school teachers. Under continuing law, enacted in 2011 by H.B. 153, all school districts and educational service centers, and all community schools and STEM schools that receive federal Race to the Top grant funds, must adopt a standards-based teacher evaluation policy that conforms with a framework developed by the State Board of Education.<sup>9</sup> Teachers generally must be evaluated annually and 50% of each evaluation must be based on student academic growth. Each employer's policy must include procedures for using evaluation results for retention and promotion decisions and for removal of poorly performing teachers.

### **Who is subject to evaluations**

(R.C. 3319.111, first paragraph)

Under the act, a teacher is subject to evaluation if the teacher is employed under a teacher license (or a teaching certificate issued under former law) and spends at least 50% of the time employed providing student instruction. Prior law required all teachers to be evaluated. By exempting teachers who spend less than half their time engaged in teaching, the act appears to narrow the applicability of the evaluation requirement to only those employees whose primary responsibility is teaching.

Nevertheless, the act exempts all substitute teachers from the requirement to be evaluated. Under former law, only substitute teachers employed for fewer than 120 days during the school year were exempt from evaluations. Therefore, former law required long-term substitute teachers to be evaluated, but the act does not.

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<sup>8</sup> R.C. 3302.10, not in the act.

<sup>9</sup> The requirement for community schools and STEM schools to adopt teacher evaluation policies is in R.C. 3314.03(A)(11)(i) and 3326.111, respectively (latter section not in the act).

## **Who conducts evaluations**

(R.C. 3319.111(D))

The act expands the list of persons who are authorized to conduct teacher evaluations. Under prior law, each evaluation had to be conducted by (1) a school district superintendent or assistant superintendent, (2) a school principal, (3) a person licensed by the State Board of Education to be a supervisor or a vocational director, or (4) a person designated to conduct evaluations under a peer review agreement entered into by the employer and the teachers' union.

First, the act adds persons licensed by the State Board to be an administrative specialist as authorized evaluators. Second, while the act retains the specific authority for persons designated by a peer review agreement to conduct evaluations, it also expands that authority to allow evaluations to be done by persons designated by *any* agreement entered into by the employer. This change makes it possible for the employer to designate evaluators through agreements with parties other than the teachers' union.

Third, the act enables an employer to contract with an entity, such as an educational service center, to do teacher evaluations. Under the act, an employee of the hired entity may conduct evaluations so long as the employee either (1) is licensed by the State Board as a superintendent, assistant superintendent, principal, vocational director, supervisor, or administrative specialist or (2) is otherwise qualified to conduct evaluations.

Finally, under the act, all authorized evaluators must obtain a credential established by the Department of Education before they can conduct evaluations. This credential is in addition to any licensure requirements that a person must meet to be an evaluator. Although the act does not provide any guidelines for the Department to use in creating the credential, the provision is likely intended to ensure that evaluators are adequately prepared to perform the particular tasks involved in evaluations.

## **Frequency and timing of evaluations**

(R.C. 3319.111(C))

The act requires employers to conduct only one annual evaluation for teachers who do not have a continuing contract (tenure). Under prior law, employers had to perform two evaluations during the school year for each nontenured teacher whom the employer was considering not rehiring for the next school year. The act retains law allowing an employer to elect to evaluate teachers who received a rating of "accomplished" on their most recent evaluation every two years, instead of annually.

Additionally, the act extends the deadline for employers to complete teacher evaluations each year from April 1 to May 1. Teachers must be provided with the results of their evaluations by May 10, instead of April 10 as formerly required.

### **Number of classroom observations**

(R.C. 3319.111(E))

Under law generally retained by the act, when doing an evaluation, the evaluator must observe the teacher on at least two occasions for a minimum of 30 minutes each time.<sup>10</sup> The act changes the number of required observations in certain cases, but it appears that each observation must still be at least 30 minutes long. First, the act requires an additional observation for nontenured teachers whose contracts are under consideration for nonrenewal, thereby increasing the number of mandatory observations for these teachers to three. Second, the act permits an employer, by adoption of a resolution, to require only one classroom observation of a teacher rated as "accomplished" on the teacher's most recent evaluation, if the teacher completes a project approved by the employer to demonstrate continued growth and practice at the accomplished level.

### **Calculation of student academic growth**

(R.C. 3319.112(A)(1))

Under the act, when calculating the student academic growth that counts for 50% of each evaluation, a teacher's students who regularly miss school must be excluded. Specifically, the act requires the exclusion of students who have 60 or more unexcused absences for the school year.

### **Collective bargaining**

(R.C. 3319.111(A) and (H))

The act specifies that the statutory requirements regarding teacher evaluations, including the frequency of evaluations, the procedures for doing them, and how they are used for employment decisions, prevail over collective bargaining agreements entered into on or after the act's effective. Continuing law also states that each employer's teacher evaluation policy becomes operative at the expiration of the teachers' collective bargaining agreement in effect on September 29, 2011 (the effective date of H.B. 153's evaluation provisions), and that the policy must be included in any renewal or extension of that agreement.

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<sup>10</sup> R.C. 3319.112(A)(3).

## **Updates of state evaluation framework**

(R.C. 3319.112(A))

The act explicitly allows the State Board of Education to periodically update its teacher evaluation framework by adoption of a resolution. It is likely that each employer would have to make corresponding updates to its teacher evaluation policy to ensure that the policy continues to conform to the state framework.

## **Evaluations by state agencies**

(R.C. 3319.112(E))

Under the act, all state agencies that employ teachers must conduct teacher evaluations. For this purpose, the State Board of Education, in consultation with the agencies, must develop a standards-based evaluation framework by June 30, 2013. Each agency then must adopt its own teacher evaluation policy that conforms to the framework. The act specifies that each agency's policy becomes operative at the expiration of any collective bargaining agreement covering the agency's teachers that is in effect on the act's effective date, and that the policy must be included in any renewal or extension of that agreement. Under continuing law, a collective bargaining agreement has a maximum term of three years.<sup>11</sup>

## **Teacher evaluation data**

(R.C. 3319.111(G) and 3333.0411)

The act requires the Chancellor of the Board of Regents annually to report the number and percentage of graduates of each Ohio teacher preparation program who were rated at each of the performance levels (accomplished, proficient, developing, and ineffective) on evaluations conducted during the previous school year. The Chancellor's initial report must be submitted by December 31, 2014. In no case may the report identify any individual.

To implement this report, the act requires each school district and educational service center, and each community or STEM school receiving federal Race to the Top money, to annually submit to the Department of Education (1) the number of teachers for whom an evaluation was conducted and (2) the number of teachers assigned each rating. Those numbers must be aggregated by the teacher preparation programs from which the teachers graduated and the graduation year. The Department must establish guidelines for reporting the evaluation data, which must prohibit the reporting of

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<sup>11</sup> R.C. 4117.09(E), not in the act.

teachers' names or any other personally identifiable information. The Department must provide the data to the Chancellor.

### **Assistant principal evaluations**

(R.C. 3319.02(D))

Although each school district was previously required to evaluate assistant principals annually in accordance with evaluation procedures adopted by the district, the act further requires those evaluation procedures to be based on principles comparable to the district's teacher evaluation policy (see above), but tailored to the duties and responsibilities of assistant principals and the environment in which they work. Continuing law contains the same requirement with respect to districts' evaluation procedures for principals. As with principals under continuing law, districts must consider evaluations when deciding whether to renew an assistant principal's contract.

### **Testing teachers**

(R.C. 3319.58)

The act makes several changes to the provision, enacted in 2011 by H.B. 153, requiring public school teachers of core subject areas, when certain circumstances apply, to take exams to prove their knowledge of the subject. First, it applies the requirement to teachers employed by joint vocational school districts, who were formerly exempt.

Second, it revises the circumstances that trigger the requirement for teachers employed by school districts. Under the act, a school district teacher is subject to the exam requirement when the teacher has received an evaluation rating of "ineffective," the lowest of four possible ratings, for two of the three most recent school years.<sup>12</sup> However, for teachers employed by community schools and STEM schools, the act retains prior law making a teacher subject to the requirement when the teacher's building is ranked by performance index score in the lowest 10% of all public schools statewide. Consequently, under the act, the requirement applies to all school district buildings, but only to teachers of core subjects in each building who have low evaluation ratings. The requirement applies only to poorly performing community school and STEM school buildings, but to all teachers of core subjects in each of those buildings.

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<sup>12</sup> See R.C. 3319.112.

Third, the act applies the exam requirement beginning in the 2015-2016 school year. Since continuing law requires school districts to have a teacher evaluation policy in place for the 2013-2014 school year,<sup>13</sup> the 2015-2016 school year is the first year a district teacher could have accumulated two "ineffective" ratings, making the teacher subject to the exams. For consistency, the delayed effective date of the exam requirement applies to community schools and STEM schools as well, even though the rankings of those schools by performance index score will be available for the 2012-2013 school year.

Fourth, the act applies the exam requirement to teachers who are *currently* teaching core subjects at the time their evaluation ratings or building ranking makes them subject to the provision. Therefore, teachers who are licensed to teach a core subject, but are not actively teaching it when the requirement is triggered, need not take any exams.

Fifth, the act specifies that the exams a teacher must take are content knowledge exams selected by the Department of Education as appropriate to determine expertise to teach the teacher's subject area and grade level. Prior law required the teacher to retake all exams necessary for licensure in that subject area and grade level, which included both content knowledge and pedagogy exams. As in former law, employers may use the exam results as a factor in employment and professional development decisions.

Finally, under the act, if a teacher employed by a school district passes the required exams, the teacher must complete professional development targeted at the deficiencies identified in the teacher's evaluations. This professional development must be paid for by the teacher. The act permits the district to terminate the teacher for failure to complete the professional development or for receipt of an "ineffective" rating on the teacher's next evaluation after the professional development.

## **Background**

Under law enacted in 2011 by H.B. 153 and retained in part by the act, in any year in which a building of a school district, community school, or STEM school is ranked in the lowest 10% of all public school buildings based on its performance index score, the building's classroom teachers must retake all exams required by the State Board of Education for licensure to teach the subject area and grade level taught by the teacher. This requirement applies to all teachers of reading and English language arts, math, science, foreign language, government, economics, fine arts, history, or geography. While the law states that the teacher is not responsible for the cost of

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<sup>13</sup> R.C. 3319.111.

retaking an exam, it does not specify who is. Presumably, that cost must be paid by the employer.

The school district, community school, or STEM school may use the exam results in deciding whether to continue to employ a teacher and in creating professional development plans for the teacher. However, an employer is prohibited from using the results as the sole factor in employment decisions, unless the teacher has failed to pass the same exam three consecutive times. Once a teacher provides proof of passing an exam to the teacher's employer, the teacher is exempt from having to take the test again for three years, regardless of the ranking of the building to which the teacher is assigned.

### **Nonrenewal of teacher and administrator contracts**

(R.C. 3319.02, 3319.06, and 3319.11)

The act extends from April 30 to June 1 the deadline for a school district or educational service center (ESC) to notify teachers that their contracts will not be renewed for the following school year. Similarly, it extends from March 31 to June 1 the deadline for providing notification of contract nonrenewal to assistant superintendents, principals, assistant principals, business managers, internal auditors, supervisors, and other administrators. The act does not change the deadline for notification of nonrenewal for superintendents and treasurers, which remains March 1.<sup>14</sup>

Due to the extension of the deadlines for nonrenewal notifications, the act also extends from June 1 to June 15 the deadline for a teacher or administrator to notify a school district or ESC that the person is declining reemployment, in cases where the person is automatically reemployed due to the district's or ESC's failure to comply with the statutory nonrenewal procedures. For example, under the act, if a teacher or administrator is automatically reemployed because the district or ESC misses the June 1 deadline for providing notice of nonrenewal, the person has until June 15 to decline that reemployment.

### **Nonrenewal notification deadline for unemployment benefits**

(R.C. 4141.29(I))

Under prior law, a school district had to notify employees by April 30 if their contracts were not going to be renewed for the following school year in order for the employees to qualify for unemployment benefits. The act extends this deadline to June 1 to correspond to its changes to the deadlines for notifying teachers and administrators

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<sup>14</sup> R.C. 3313.22 and 3319.01, neither section in the act.

of nonrenewal. However, the extension applies to all employees of the district, not just teachers and administrators. Presumably, then, any administrative, teaching, or nonteaching employee of a school district who is notified by June 1 that the employee's contract will not be renewed will not lose eligibility for unemployment benefits due to the date of the notification.

### **Sick leave for school district employees**

(R.C. 124.38)

The act exempts school district employees from the statutory entitlement to accrue sick leave under the Public Employee Personnel Law, if they are (1) substitutes, (2) adult education instructors who are scheduled to work the full-time equivalent of less than 120 days in the school year, or (3) employed on an as-needed, seasonal, or intermittent basis. Law enacted in 2011 by H.B. 153 exempted these three categories of employees from a provision of the School Employment Law (R.C. Chapter 3319.) that entitles school district employees to 15 days of paid sick leave each school year.<sup>15</sup> However, H.B. 153 did not include a conforming revision to the Public Employee Personnel Law (R.C. Chapter 124.) that allows district employees who are not provided sick leave under the School Employment Law to accrue 4.6 hours of paid sick leave for every 80 hours of service. Therefore, after enactment of H.B. 153, the employees exempted from accruing sick leave under the School Employment Law may have become entitled to accrue sick leave under the Public Employee Personnel Law instead.

This act exempts those employees from accruing sick leave under the Public Employee Personnel Law as well. Consequently, under this act, a school district is not required to provide those employees with sick leave. Nevertheless, the district probably could voluntarily grant them sick leave at an accrual rate determined by the district.

### **Educational Choice Scholarship Program**

#### **Eligibility for students of newly chartered schools**

(R.C. 3310.03 and 3310.031; Section 733.70)

The act requires the State Board of Education to adopt rules establishing procedures for awarding Educational Choice (Ed Choice) scholarships (vouchers) to students who are attending a nonpublic school at the time the State Board grants the school a charter, thereby qualifying it to enroll voucher students. Students who are eligible for a scholarship may begin receiving scholarship payments the school year

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<sup>15</sup> R.C. 3319.141, not in the act.

after the charter is initially granted. In adopting its rules, the State Board must include provisions for (1) extending the scholarship application period, if necessary, to enable the newly eligible students to apply for the program for the next school year, and (2) notifying the students' resident school districts that the students may be awarded a scholarship for that school year.

### **Eligibility criteria**

(R.C. 3310.031(B))

A student enrolled in a newly chartered nonpublic school qualifies for an Ed Choice scholarship if the student meets one of the following conditions:

(1) The student (a) was enrolled in a school operated by the student's resident district or in a community school at the end of the last school year before the student enrolled in the newly chartered school, and (b) would be assigned by the student's resident district, for the current or following school year, to a school whose students qualify for scholarships (see "**Background – Ed Choice**" below).

(2) The student (a) was not enrolled in any public or nonpublic school before enrolling in the newly chartered school (a student who entered kindergarten in the newly chartered school, for example) and (b) would be assigned by the student's resident district, for the current or following school year, to a school whose students qualify for scholarships.

(3) The student was enrolled in a school operated by the student's resident district at the end of the last school year before the student enrolled in the newly chartered school, and, during that school year, the district school's students qualified for scholarships (or would have qualified for scholarships, in the case of a student whose last year attending a district school was before the 2006-2007 school year, when the Ed Choice program began).

(4) The student (a) was enrolled in a community school at the end of the last school year before the student enrolled in the newly chartered school, and (b) during that school year, would otherwise have been assigned by the student's resident district to a school whose students qualified for scholarships (or would have qualified for scholarships, in the case of a student whose last year attending the community school was before the 2006-2007 school year, when the Ed Choice program began).

As a general rule, students already attending a nonpublic school are ineligible to receive an Ed Choice scholarship. Although the act makes an exception for students enrolled in a newly chartered school, it reflects the pre-existing general policy that students, to receive a scholarship under the act, had to have been enrolled in a public

school (or never been enrolled in school because they were not yet of school age) before enrolling in the newly chartered school. A student who was enrolled in another nonpublic school immediately prior to enrolling in the newly chartered school is not eligible for a scholarship.

#### **Application period for 2012-2013 school year**

(Section 733.70)

The act requires the Department of Education to conduct a second Ed Choice application period for the 2012-2013 school year, to give eligible students enrolled in nonpublic schools that were granted a charter during the 2011-2012 school year a chance to apply for a scholarship. The original application period for the 2012-2013 school year ended on April 13, 2012. The second application period must run from September 24, 2012 (the act's effective date) through October 24, 2012.

Although Ed Choice scholarships generally may be used at any chartered nonpublic school,<sup>16</sup> the act specifies that students who are awarded a scholarship for the 2012-2013 school year during the second application period may use that scholarship only at the nonpublic school in which the student was enrolled for the 2011-2012 school year. In other words, the act limits the student to using the scholarship at the newly chartered school. After the 2012-2013 school year, however, it appears that the student may use the scholarship at another chartered nonpublic school if the student chooses.

#### **Scholarship payments for children with custodians**

(R.C. 3310.08)

The act specifies that, in the case of a child placed in the custody of a government agency or a person other than the child's parent, Ed Choice scholarship payments on behalf of the child must be deducted from the school district that actually includes that child in its average daily membership, as determined by the Department of Education. Ordinarily, by statute, that district is the district in which the student's custodian is located. But in some cases, by practice at least, it may be the district in which the child's parent lives.

#### **Background – Ed Choice**

The Ed Choice program operates statewide in every district except Cleveland. It provides scholarships for students who are assigned or would be assigned to district schools that have persistently low academic achievement to pay their tuition to attend

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<sup>16</sup> R.C. 3310.10, not in the act.

chartered nonpublic schools. Generally, a student is eligible to apply for an Ed Choice scholarship if the student is attending, or otherwise would be assigned to, a school building operated by the student's resident district that, in two of three report card rankings, either (1) has been declared to be in academic watch or academic emergency or (2) is ranked in the lowest 10% of all public school buildings according to performance index score, and, in either case, was not rated excellent or effective in the most recent ranking.<sup>17</sup> The amount of each annual Ed Choice scholarship is the lesser of (1) the tuition charged by the chartered nonpublic school in which the student is enrolled or (2) a "maximum" amount, which is \$4,250, for grades K through 8, and \$5,000, for grades 9 through 12.<sup>18</sup>

The scholarships are financed through a "deduct and transfer" method. Each student awarded an Ed Choice scholarship is counted in the average daily membership (student count) of the student's resident school district for school funding purposes. The Department of Education then deducts the amount of each student's scholarship from the district's state aid account.

### **Assessment data for scholarship students**

(R.C. 3310.15 and 3313.978(G))

The act requires the Department of Education, when publishing achievement assessment data for scholarship (voucher) students, to disaggregate that data by grade level, instead of by age as previously required. Under continuing law, nonpublic schools that enroll students participating in the Ed Choice or Cleveland Scholarship Program must administer all grade-level state achievement assessments to those students and report their scores to the Department. The Department publishes the test data on its web site and distributes it to parents of students eligible for the voucher programs.

### **Notification about scholarship programs for disabled students**

(R.C. 3323.052)

Under the act, whenever a school district evaluates a child with a disability or develops, reviews, or revises the child's individualized education program (IEP), the district must notify the child's parent about the Autism Scholarship Program and the Jon Peterson Special Needs Scholarship Program. The notice must include a prescribed statement indicating that the child might be eligible for a scholarship (voucher) to

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<sup>17</sup> R.C. 3310.03.

<sup>18</sup> R.C. 3310.09, not in the act.

attend a special education program operated by an alternative public provider or a registered private provider, instead of the program operated by the school district. It also must list the phone number of the Department of Education office that administers the scholarship programs and specify where scholarship information may be located on the Department's web site. The notice may be provided by letter or electronic means.

## **Background**

The Autism Scholarship Program awards scholarships to children with autism in grades pre-K to 12 to pay tuition at alternative public or private providers of special education programs. Similarly, beginning in the 2012-2013 school year, the Jon Peterson Special Needs Scholarship Program will provide scholarships for students with all types of disabilities (including autism) in grades K to 12 to attend alternative special education programs. The maximum scholarship amount under both programs is \$20,000. The scholarship must be used to implement a child's IEP in lieu of receiving those services from the student's resident school district. While the number of Special Needs Scholarships that may be awarded annually is capped at 5% of the number of identified disabled students residing in Ohio during the previous fiscal year, there is no cap on the number of Autism Scholarships that may be awarded.<sup>19</sup>

## **Closure of dropout recovery community schools for poor performance**

(R.C. 3314.35 and 3314.36; conforming change in R.C. 3314.016; Section 267.60.23. of H.B. 153 of the 129th General Assembly (repealed))

Under continuing law, most community schools that persistently do not meet specified academic performance criteria must close permanently. Those automatic closure provisions do not apply to either (1) schools in which a majority of the students are enrolled in an approved dropout prevention and recovery program, or (2) schools in which a majority of the enrolled students are children with disabilities receiving special education and related services.

The act places a condition on the continued exemption from the closure provisions for community schools operating dropout programs. It specifies that, unless the General Assembly enacts separate performance standards, a report card rating system, and closure criteria for community schools that operate dropout prevention and recovery programs by March 31, 2013, those schools are subject to permanent closure under the existing criteria that applies to other community schools. But the act also specifies that only the performance ratings issued to those schools for the 2012-2013 school year and later count in determining if a school meets the closure criteria. The act

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<sup>19</sup> R.C. 3310.41, 3310.52, and 3310.56, none in the act.

does not affect the continuing exemption from closure for community schools in which a majority of the enrolled students are receiving special education and related services.

The act does not actually require the General Assembly to enact performance standards, a report card rating system, and closure criteria for dropout schools. Rather, it only implies that the General Assembly must do so in order to prevent the existing closure standards from being applied to those schools. (See also "**Community school sponsor rankings**" below.) Prior uncodified law, repealed by the act, required the State Board of Education, by July 1, 2012, to review its previous legislative recommendations for performance standards for community schools serving dropouts and to issue new recommendations.

### **Background – community school closure**

The criteria for permanent closure of a community school (unless exempted) are as follows:

(1) For a school that does not offer a grade higher than 3, the school has been declared to be in a state of academic emergency for two of the three most recent school years;

(2) For a school that offers any of grades 4 to 8 but no grade higher than 9, the school has been declared to be in a state of academic emergency for two of the three most recent school years and showed less than one standard year of academic growth in either reading or math for at least two of the three most recent school years;

(3) For a school that offers any of grades 10 to 12, the school has been declared to be in a state of academic emergency for two of the three most recent school years.<sup>20</sup>

Continuing law also specifies that a community school's performance ratings for its first two years of operation may not be considered toward automatic closure of the school or any other matter that is based on report card ratings.<sup>21</sup>

### **Community school sponsor rankings**

(R.C. 3314.016)

The act revises the law, enacted in 2011 by H.B. 153, that prohibits a community school sponsor from sponsoring additional schools if it is ranked in the lowest 20% on an annual ranking of sponsors by their composite performance index scores. The

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<sup>20</sup> R.C. 3314.35(A)(2).

<sup>21</sup> R.C. 3314.012, not in the act.

composite performance index score is a measure of the academic performance of students enrolled in community schools sponsored by the same entity.

### **Office of Ohio School Sponsorship**

First, the act specifies that the Department of Education's Office of Ohio School Sponsorship must be included in the annual rankings of community school sponsors. The Office is responsible for directly authorizing a limited number of new and existing community schools under other provisions enacted by H.B. 153 (see "**Community school sponsorship by the Department of Education**" below). Thus, the Office will be ranked among other sponsors based on the performance of the schools directly authorized by that Office and the schools whose sponsorship the Office has assumed. However, the act also expressly exempts the Office from the prohibitions against sponsoring additional community schools based on its ranking.

### **Exclusions from sponsor rankings**

#### **Schools open for less than two full school years**

The act adds a new provision excluding from the calculation of sponsor rankings any community school that has been in operation for less than two full school years.

#### **Special education schools**

The act also permanently excludes from the calculation of sponsor rankings all community schools that are exempt from closure for poor academic performance because a majority of the students are disabled students receiving special education. Under prior law, the exclusion of these schools from the rankings would have ended January 1, 2013, unless the General Assembly enacted performance standards for the schools by that date. Continuing law exempts such community schools from the provisions requiring automatic closure for poor performance.<sup>22</sup> The act maintains that exemption, too. But, as noted below, it enacts a new condition modifying the exemption for dropout recovery community schools.

#### **Dropout recovery schools**

Prior law excluded the performance of dropout recovery community schools from the sponsor rankings until January 1, 2013, but it also stated that they could be permanently excluded if the General Assembly adopted performance standards for dropout recovery schools by that date. The act eliminates that provision and enacts a new conditional exclusion from the sponsor rankings for dropout recovery schools.

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<sup>22</sup> R.C. 3314.35(A)(3).

Under the act, the Department must include schools that operate dropout recovery programs when calculating the composite performance index scores of community school sponsors for the purpose of the sponsor rankings, *if* the schools become subject to the existing involuntary closure criteria. In other words, when (and if) the exemption from closure for dropout recovery schools no longer applies, the Department must also start including those schools in the calculation of sponsor rankings. (Elsewhere, the act specifies that unless the General Assembly enacts performance standards, a report card rating system, and closure criteria for community schools that operate dropout prevention and recovery programs by March 31, 2013, those schools are subject to permanent closure under the existing criteria that applies to other community schools (see "**Closure of dropout recovery community schools for poor performance**" above). Accordingly, if the General Assembly does not enact those measures by that date, dropout recovery community schools will become subject to both the sponsor ranking provisions and the closure provisions at that time.

### **Due date for annual rankings**

The act also requires the Department to publish the annual sponsor rankings between October 1 and October 15. Prior law did not specify a due date for the rankings.

### **Additional measures to rank sponsors**

(Section 733.60)

Finally, the act includes an uncodified statement that the General Assembly "intends to enact a law, not later than December 31, 2012, that establishes a battery of measures to be used to rate the performance of the sponsors of community schools . . . and to determine whether an entity may sponsor additional community schools."

### **Community school sponsor definition**

(R.C. 3314.02)

The act revises and updates the definition of "sponsor" for purposes of the community school laws to explicitly include (1) boards of school districts and educational service centers that agree to the conversion of a school or building and (2) "grandfathered" sponsors, which are exempt from having to obtain the Department of Education's approval to sponsor community schools. These latter sponsors are entities that were already sponsoring community schools as of April 8, 2003, when the approval requirement became law, and are exempt from ever having to be approved by the Department.

## **Community school sponsorship by the Department of Education**

(R.C. 3314.015 and 3314.029)

The act adds two new specifications with respect to the Department of Education's role in community school sponsorship.

(1) The act specifically authorizes the Department to deny an application submitted under the Ohio School Sponsorship Program by an existing community school, if the school's previous sponsor had elected not to renew the school's sponsorship contract. (This program, established in 2011 by H.B. 153, allows a limited number of community schools to apply to the Department for direct authorization to establish or continue the school, without otherwise having to obtain the sponsorship of another public or private entity. Prior to the act, the only ground upon which the Department could deny an application was that the application did not contain the information required by law.)

(2) The act specifies that the Department's Office of Ohio School Sponsorship, which administers the Ohio School Sponsorship Program, is the entity that will assume sponsorship of community schools whose sponsors have had their approval to sponsor community schools revoked. (Under continuing law, the Department is responsible for the oversight of community school sponsors. If the Department finds, and the State Board of Education or its designee confirms, that the sponsor is not in compliance with its contract or the Department's rules, the Department may revoke the sponsor's approval to sponsor community schools and assume sponsorship of any schools under contract with that sponsor. The Department may assume sponsorship for two years or until the governing authority of each school finds a new sponsor, whichever is earlier.)

## **Community school enrollment verification**

(R.C. 3314.11)

Continuing law requires each school district to report to the Department of Education the number of its students who are enrolled in community schools and the name of each student's community school, while each community school must report the resident school district of each of its students.<sup>23</sup> Under the act, each school district must conduct monthly enrollment reviews for district students attending community schools. As part of the review, the district must verify to the Department of Education the community school in which each student is enrolled and that the student is entitled to attend school in the district.

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<sup>23</sup> R.C. 3314.08(B).

The act authorizes a community school to adopt a policy prescribing the number of documents that are necessary to verify a student's residency, for purposes of the school's initial reporting of its students' resident districts. The community school's policy supersedes any similar policy adopted by a student's resident district. If a community school does not adopt its own policy, the resident district's policy governs.

### **Determining student residency**

For determining a community school student's residency, the act codifies Department of Education policy by specifying that "the school district in which a parent or child resides is the location the parent or student has established as the primary residence and where substantial family activity takes place." Under the act, the following documents may serve as evidence of the primary residence:

(1) A deed, mortgage, lease, current home owner's or renter's insurance declaration page, or current property tax bill;

(2) A utility bill or receipt of utility installation issued within 90 days of the student's enrollment;

(3) A paycheck or paystub issued to the parent or student within 90 days of the student's enrollment that includes the address of the parent's or student's primary residence;

(4) The most current available bank statement issued to the parent or student that includes the address of the parent's or student's primary residence; or

(5) Any other official document issued to the parent or student that includes the address of the parent's or student's primary residence. The act directs the Superintendent of Public Instruction to develop guidelines for determining what qualifies as an "official document" for this purpose.

In the case of a homeless student, the student's resident school district must be determined in accordance with federal and state law. Under the federal McKinney-Vento Homeless Assistance Act and corresponding state law, the parent of a homeless student has the option of enrolling the student in either (1) the student's "school of origin," which is the school the student attended when permanently housed or the school in which the student was last enrolled or (2) the district-operated school serving the geographic area in which the shelter where the student currently resides is located.<sup>24</sup>

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<sup>24</sup> 42 United States Code (U.S.C.) 11432(g)(3); R.C. 3313.64(F)(13), not in the act.

## **Disputes over residency**

Under the act, if a community school and a school district disagree about where a student resides, the community school must provide the district with documentation of the student's residency and make a good faith effort to accurately identify the student's correct residence. After doing so, the community school may refer the matter to the Superintendent of Public Instruction for resolution, so long as the referral is made within 60 days after the next monthly deadline established by the Department of Education for community schools to report their enrollment data. The state Superintendent has 30 days to determine the student's resident school district. If necessary based on the determination, the state Superintendent must adjust the amount of state funding deducted from the state aid accounts of the affected school districts and paid to the student's community school.

## **Community school governing authority membership**

(R.C. 3314.02(E))

The act increases the number of governing authorities of start-up community schools on which a person can serve at the same time from two (under prior law) to five. Under continuing law, each start-up community school must have a governing authority consisting of not less than five individuals.

## **Single-gender community schools**

(R.C. 3314.06(D))

The act allows the governing authority of a community school to establish a single-gender school without establishing a comparable school for the other gender, as currently required. Therefore, the governing authority may either (1) establish one community school for just boys or just girls or (2) establish single-gender schools for both sexes under the same sponsorship contract. In either case, as stated in continuing law, the purpose of creating a single-gender school must be to take advantage of the academic benefits some students realize from single-gender instruction and to offer parents the option of a single-gender school.

The act's authorization to maintain just one single-gender community school appears to comply with Title IX of the federal Education Amendments of 1972, which prohibits gender discrimination in educational programs and activities receiving federal financial assistance.<sup>25</sup> While Title IX regulations generally require a recipient of federal funding to provide "substantially equal" schools for both sexes, they also contain a

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<sup>25</sup> 20 U.S.C. 1681.

specific exception allowing a nonvocational charter school that is a single school to be operated as a single-sex school without regard to the general requirement.<sup>26</sup> Finally, the act conforms Ohio law to the Title IX terminology by specifying that, in the case of a governing authority that maintains separate community schools for each gender, the facilities and learning opportunities for boys and girls must be "substantially equal," rather than "comparable" as in prior Ohio law.

### **Community schools operating in residential facilities**

(Section 267.50.30 of H.B. 153 of the 129th General Assembly)

Each budget act since 2005, including most recently H.B. 153 of the 129th General Assembly, has contained an uncodified (presumably temporary) provision that prohibits a community school that was not open for operation by May 1, 2005, from operating from a residential facility. The act amends the uncodified provision from H.B. 153 to specify instead that a community school that was open as of May 1, 2005, *may* operate from or in a residential facility, regardless of when the community school's operations from or in a particular facility began. Both the prior law's prohibition and the act's authorization apply to a "home, institution, foster home, group home, or other residential facility . . . that receives and cares for children," and that either (1) is licensed as such under state law, (2) is maintained by the Department of Youth Services, (3) is operated by a person licensed for that purpose, (4) accepts children from a licensed child placement authority, or (5) is a county or joint county children's home.<sup>27</sup>

### **Community school contracts on the Internet**

(R.C. 3314.03; Section 733.15)

The act requires the Department of Education to make available on its web site a copy of every approved, executed community school contract that is filed with the Superintendent of Public Instruction. The Department, not later than December 23, 2012 (90 days after the act's effective date), must make available on its web site a copy of every approved, executed community school contract that was filed with the state Superintendent before the act's effective date (September 24, 2012).

Under continuing law, each contract entered into between a sponsor and the governing authority of a community school must be filed with the state Superintendent. Among a range of other issues, the contract specifies the community school's education program, admission and performance standards, teacher qualifications, estimated

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<sup>26</sup> 34 Code of Federal Regulations (C.F.R.) 106.34(c).

<sup>27</sup> See the definition of "home" in R.C. 3313.64(A)(4), not in the act.

budget and per pupil expenditures, dismissal procedures, and whether the school operates as a nonprofit or public benefit corporation.

## **Access to school district real property**

### **Real property a district seeks to dispose of**

(R.C. 3313.41)

The act makes three changes to the law governing the sale of real property when a school district seeks to dispose of it.

First, it expands the "right of first refusal" to include a public college-preparatory boarding school located within the school district. Pre-existing law already grants a right of first refusal (which is a 60-day window to offer to purchase the property before it is auctioned or sold by direct sale) to community schools located within the district. This expansion affects only the Cincinnati school district, as it is the location of the future public college-preparatory boarding school. The school was authorized in 2011 by H.B. 153, which directed the State Board of Education to request proposals to open the school no earlier than the 2013-2014 school year. In May 2012, the State Board selected the SEED Foundation of Cincinnati to operate the school. However, the law grants the State Board discretion to request future proposals for additional college-preparatory boarding schools elsewhere.<sup>28</sup> If that happens, the act's expansion of the right of first refusal would apply to other districts where future boarding schools might open.

Second, the act stipulates that the fair market value of real property that a district offers for sale to community schools or a public college-preparatory boarding school must be based on an appraisal that is not more than one year old. Under continuing law, the sale price offered to community schools (and now a public college-preparatory boarding school) cannot exceed the fair market value.

Third, it expands the list of entities to which a school district may directly sell real or personal property exceeding \$10,000 in value, without first holding a public auction, to include (1) private, nonprofit institutions of higher education that hold a certificate of authorization from the Board of Regents and (2) the governing authorities of chartered nonpublic elementary and secondary schools. Continuing law already allows direct sale of school district property to state colleges and universities and other public entities, such as school library districts and other political subdivisions, park commissioners, and the Adjutant General. These direct sales, however, cannot

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<sup>28</sup> R.C. 3328.11, not in the act.

supersede community schools' (and now a public college-preparatory boarding school's) right of first refusal to purchase real property.

### **Right to purchase or lease unused real property**

(R.C. 3313.411)

The act also amends law, enacted in 2011 by H.B. 153, that requires school districts to offer to sell or lease to community schools real property that (1) had been used by the district for school operations since July 1998, but (2) has not been used in that capacity for two years.

First, it requires districts to offer the unused property to any public college-preparatory boarding school in the district, as well as to community schools located in the district. As with the expansion of the right of first refusal described above, this change will affect only the Cincinnati school district, unless the State Board of Education elects in the future to authorize additional boarding schools elsewhere.

Second, it permits, but does not require, districts also to offer the property to existing community schools that are not located within the district, but that have plans, stipulated in their contracts with their sponsors, either to relocate to the district or to add facilities that will be located in the district. (Generally, a community school may be located in only one district but, in some limited circumstances, may operate in more than one district at the same time.)<sup>29</sup>

Third, the act specifies that if a school district must conduct an auction (in the case of an offer to sell the property) or a lottery (in the case of an offer to lease it) because more than one eligible party accepted the district's offer, the auction or lottery is conducted only among those parties that notified the district of their intent to buy or lease the property. Prior law required that the auction or lottery be conducted among all eligible parties, regardless of whether they expressed interest.

Finally, the act stipulates that the fair market value of the property must be based on an appraisal that is not more than one year old.

### **College-preparatory boarding school governance**

(R.C. 3328.15 and 3328.24)

The act permits the Governor, the operator of a college-preparatory boarding school, or any other person or entity who appoints a member of the board of trustees of

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<sup>29</sup> See R.C. 3314.05(B)(3) and (4), not in the act.

a college-preparatory boarding school to remove that member from the board at any time. Additionally, it requires the members of the board to file a disclosure statement with the Ohio Ethics Commission. Furthermore, the act removes a reference that operators of a college-preparatory boarding school must comply with certain education provisions, including the administration of achievement and other assessments, Education Management Information System (EMIS) reporting, and criminal records checks for employees. This change may not have a substantive effect because continuing law requires the school's board of trustees to comply with these requirements.

## **STEM schools**

### **Governance of a group of STEM schools**

(R.C. 3326.03, 3326.031, 3326.17, and 3326.21)

The act authorizes the establishment of a group of STEM schools to operate from separate facilities in one or more school districts under the direction of a single governing body. As with other STEM schools, a proposal for the group of schools must be submitted to the STEM Committee for approval. The Committee must judge each proposed school on its own merits and must approve each one individually. Once a group of STEM schools has been approved, the governing body in charge of them may request approval from the Committee for additional schools to join the group.

If a group of STEM schools is approved, the Department of Education must calculate state funding for each school within the group separately and pay that funding directly to the schools. Both the group and each individual school within the group must comply with the STEM school law, with certain exceptions. First, no school in the group may be organized or funded under the model of governance in which the board of education of a school district is the school's governing body (see "**Background – STEM schools**" below). Instead, the group's governing body must be a new board created just to oversee the schools.

Second, schools in the group may share certain administrators. Continuing law requires each STEM school to have a chief administrative officer, who serves as the school's instructional and administrative leader, and a treasurer licensed by the State Board of Education.<sup>30</sup> But the act permits the group's governing body to appoint a person to be the chief administrative officer for two or more schools in the group. It also allows the governing body to employ a single licensed treasurer to manage the fiscal affairs of all the group's schools.

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<sup>30</sup> R.C. 3326.08, not in the act, and 3326.21.

Finally, the act directs the Department of Education to issue a report card for the group of STEM schools as a whole, including a performance rating for the group. As in prior law, though, the Department still must issue a separate report card for each school within the group. And like other STEM schools, the academic performance data of each student enrolled in one of the group's schools also must be combined with data from the student's resident school district for the purpose of calculating the district's report card performance.

#### **Classroom facilities assistance**

(R.C. 3318.70)

STEM schools that are part of a group of schools under the same governing body are eligible for state funding under an existing program, enacted in 2011 by H.B. 153, that authorizes the Ohio School Facilities Commission, with Controlling Board approval, to provide classroom facilities funding to STEM schools that are not governed by a school district board of education. To apply for funding under the program, a STEM school's governing body must submit a proposal to the Commission indicating the total amount of funding requested and the amount of other funding pledged for the project, the latter of which must be at least equal to the requested state funding. In the case of a group of STEM schools under the act, the group's governing body must submit a separate proposal to the Commission for each school within the group, and the Commission must consider each proposal independently. Presumably, then, the Commission may decide to provide facilities funding for some schools within the group, but not for others.

#### **STEM schools and STEM grants for gifted students**

(R.C. 3326.03, 3326.04, and 3326.10)

The act allows the STEM Committee to approve the establishment of STEM schools to serve only students who have been identified as gifted. This new authority is an exception to the continuing law that generally prohibits STEM schools from limiting admission based on intellectual, athletic, or artistic ability or other measures of student achievement or aptitude. The act's exemption also applies to a STEM program operated by a school district or community school that is awarded a monetary grant from the STEM Committee, thereby authorizing state grants (if money is appropriated) to STEM programs that serve only gifted students.

#### **Background – STEM schools**

A STEM school is an independent, public science, technology, engineering, and mathematics school for any of grades 6 to 12 established through a collaborative

endeavor of both public and private entities, including at least one school district. Each STEM school must be established in accordance with a proposal developed by the collaborating entities and approved by the STEM Committee. The Committee consists of the Superintendent of Public Instruction, Chancellor of the Board of Regents, Director of Development, and four public members with expertise in business or the STEM fields.<sup>31</sup>

Each STEM school is under the oversight of a governing body, the composition of which must be described in the school's proposal to the STEM Committee. The governing body may be a new, independent board of individuals created for the sole purpose of governing the STEM school. Alternatively, a single school district board of education may serve as the governing body of a STEM school.<sup>32</sup>

## **Educational service centers**

### **Agreements for supervisory services**

(R.C. 3313.843 and 3317.11)

Under the act, larger school districts that contract with an educational service center (ESC) for services for which the state provides per-pupil funding may opt not to receive supervisory teachers from the ESC. In that case, the district does not have to pay for those teachers through a deduction from the district's state aid account. However, it still must pay the ESC the \$6.50 per pupil required for all districts that receive ESC services for which the state provides per-pupil funding.

This option is limited to districts with more than 16,000 students, because those districts elect to receive services from an ESC. Districts with smaller student enrollments, which are required by continuing law to receive the services for which the state provides per-pupil funding, may not decline supervisory teachers under the act.

Under continuing law, when providing supervisory teachers to a school district, an ESC must supply one supervisory teacher for the first 50 classroom teachers the district requires to achieve a 25:1 student-teacher ratio, and one supervisory teacher for each additional 100 classroom teachers required to achieve that ratio. The cost of each supervisory teacher is equal to the sum of (1) the statutorily prescribed minimum salary for the teacher, (2) an amount equal to 15% of that salary, and (3) a travel allowance, which is the lesser of \$223.16 per month or \$2,678 per year.

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<sup>31</sup> R.C. 3326.02, not in the act, and 3326.03.

<sup>32</sup> R.C. 3326.03 and 3326.51, the latter section not in the act.

## **Fee-for-service agreements**

(R.C. 3313.845)

The act eliminates the annual July 1 deadline by which a fee-for-service agreement between an ESC and a school district must be filed with the Department of Education, thereby allowing the agreement to be filed at any time during the school year. Under continuing law, the Department deducts the fees contained in the agreement from the school district's state aid payments and pays those fees to the ESC on the district's behalf. The act's change only affects fee-for-service agreements. Agreements for which the state provides per-pupil payments to the ESC must still be filed by July 1 each year, as in prior law.<sup>33</sup>

## **Direct billing for ESC services**

(R.C. 3313.847)

A child who is between ages five (three, if disabled) and 22 is entitled to attend school in the school district in which the child's parent resides. In some cases, however, a child may be entitled to attend school in a different district. One such case is the situation in which a child has been placed in the custody of an agency or a person other than the parent. In that case, the child is entitled to attend school in the district in which the child resides; however, generally, the parent's resident district is responsible for paying the cost of educating the child, and may owe tuition to the other district for that cost.<sup>34</sup>

Accordingly, a child placed in the custody of a county or multi-county (district) juvenile detention facility may receive educational services from the district in which the detention facility is located. But sometimes a facility arranges separately for those services without going through the school district in which it is located. The act permits an ESC that has such a contract to provide those services to submit the invoice directly to the school districts responsible for paying the cost of educating each child, instead of first billing the district in which the facility is located. Moreover, it instructs the former district to pay the ESC for those services. Finally, it directs that district to include the child in its "average daily membership" (student count for state operating funding) and prohibits any other district from including the child in that count. Ordinarily, under continuing law, the school district that actually provides services for a child, not

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<sup>33</sup> R.C. 3313.843.

<sup>34</sup> R.C. 2151.362, 3313.64(B) and (C), and 3313.65, none in the act.

necessarily the one paying for those services, may count the child in its average daily membership.<sup>35</sup>

## **Early admittance to kindergarten or first grade**

### **School districts**

(R.C. 3321.01(A)(2) and (D); conforming change in R.C. 3313.842)

The act replaces the statutory standards governing early admittance to kindergarten and first grade with a general requirement that school districts admit underage students to those grades only in accordance with their own acceleration policies, which state law requires all districts to have (see "**Background – acceleration policies**" below). That is, the law resulting from the act's revisions states that a child cannot be admitted to kindergarten or first grade if the child is not five or six years old, respectively, by the district's cut-off date, unless the child has been recommended for early admittance in accordance with the district's acceleration policy. Still, the act requires that a child who does not meet the age cut-off date *must* be evaluated for early admittance upon referral by either (1) the parent or guardian, (2) an educator employed by the district, (3) a preschool educator who knows the child, or (4) a pediatrician or psychologist who knows the child. This stipulation conforms the statute to the State Board of Education's model acceleration policy (see below).

The act does not change the general cut-off dates for kindergarten and first grade: a child generally must be five or six years old, respectively, by September 30, unless the district has opted to set an earlier cut-off date of August 1. But with the act's shift to each district's acceleration policy as the standard for early admittance, the act eliminates the statutory requirements that (1) children referred for early admittance to kindergarten demonstrate readiness through a testing program and (2) each district establish a committee to evaluate readiness for skipping kindergarten and enrolling early in first grade. Each district's individual, state-approved acceleration policy now governs early admittance to kindergarten and first grade, subject to the act's stipulation that children referred by parents or guardians, educators, pediatricians, or psychologists must be evaluated for early admittance.

### **Background – acceleration policies**

State law requires each school district to have an acceleration policy, and requires the State Board of Education to have adopted a statewide model policy. A district may adopt either the State Board's model or, subject to the approval of the

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<sup>35</sup> R.C. 3317.03(A), not in the act.

Department of Education, its own policy. Each district's policy must cover whole grade acceleration, subject area acceleration, early high school graduation, and other issues addressed in the State Board's model policy. The State Board's model addresses early admittance to kindergarten and first grade and, therefore, so must each district's policy. The model states that a child must be evaluated for early admittance if referred by the parent, a district educator, a preschool educator who knows the child, or a pediatrician or psychologist who knows the child. The act, therefore, conforms the statute to this provision of the State Board's model.<sup>36</sup>

### **Community schools**

(R.C. 3314.06(A) and 3314.08(B))

The act adds, to the law governing community school admission policies, a statement that a child younger than age five "may be admitted" to the school "in accordance with" the act's new standards for early admittance to a school district. The effect of this statement may not be precisely clear, because neither prior law nor the act explicitly require community schools to adopt acceleration policies. But one possible interpretation may be that community schools offering kindergarten and first grade may opt to admit children who are younger than the cut-off date and, if they do, they must do so in the same manner as the act requires of school districts. Therefore, community schools opting to admit the younger children may have to adopt acceleration policies and may have to evaluate for early admittance students referred by parents or guardians, educators, pediatricians, or psychologists.

### **Transfer students**

(R.C. 3321.01(A)(4))

The act prohibits a school district from denying admission, "based on age," to a student seeking to transfer into a district school, if the student was previously admitted to kindergarten by another school district or a chartered nonpublic school. This prohibition appears to address situations in which a student who has a birthday between August 1 and September 30 was admitted to kindergarten in a district or chartered nonpublic school, and then transfers to a school district that has an earlier age cut-off date for kindergarten and first grade. The act would prohibit the new district from denying admission based on its earlier cut-off date. It also would appear to address situations where a student enrolls early in kindergarten in a district and then

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<sup>36</sup> R.C. 3324.10, not in the act. The State Board's model policy is available online. From the Department's home page, [www.education.ohio.gov](http://www.education.ohio.gov), click on "Learning Supports," then on "Gifted Education," then on "Rules, Regulations and Policies for Gifted Education," then on "Academic Acceleration for Advanced Learners," and finally on "Model policy text and introductory information."

transfers to another district with different standards for early admittance under its acceleration policy.

## **Licensing of preschool and latchkey programs**

(R.C. 3301.58)

The act eliminates the requirement that a preschool or latchkey program operated by a school district, county DD board, or chartered nonpublic school renew its license every two years and, instead, specifies that the program's license remains valid until it is revoked by the Department of Education or the program ceases operations. The act also extends, from six months to one year, the length of the provisional license issued to a new preschool or latchkey program.

Prior law required the Department to investigate and inspect each preschool or latchkey program when a program applied for a renewal of a license; the act eliminates this requirement. With the elimination of the renewal process, the act requires the Department instead to investigate and inspect a program annually, and to notify the program of the results.

Finally, the act removes the requirement that a preschool or latchkey program's license contain (1) the name of the program's administrator, (2) the address where the program is operating, and (3) the toll-free number to call to report suspected violations of the law by the program. But the act retains a requirement that the State Board of Education's rules for preschool or latchkey programs must be "consistent with and meet or exceed" statutory requirements for child day-care centers under R.C. Chapter 5104.<sup>37</sup> Since those statutory requirements include a requirement for this information to be shown on licenses for child day-care centers, the licenses of preschool or latchkey programs may still have to contain the information.

## **Reporting data of young children**

(R.C. 3301.0714, 3301.0723, 3301.941, and 3314.17)

The Department of Education maintains the Education Management Information System (EMIS), which is an electronic database used by the Department and schools to administer their programs. Among other things, EMIS includes data about student scores on state achievement assessments and other personally identifiable information. To maintain a child's privacy, the Department generally may not have access to a child's name but, instead, has access to a unique student data verification code, assigned to

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<sup>37</sup> R.C. 3301.53(B) and (C).

each student by a school district, a community school, or an independent contractor of the Department. The code is used to track a student's progress over time and to ensure that each student is properly counted for school funding and testing purposes. It is often referred to as the "SSID," which is an acronym for "Statewide Student Identifier." Also, as authorized by statute, to assist the Director of Health and school districts in transitioning young children with developmental disabilities from the "Help Me Grow" program to school district services, the Director is authorized to receive SSIDs for those children so their progress can be tracked as required by federal law.<sup>38</sup>

The act further expands EMIS to include data for other young children, who are not yet of compulsory school age (i.e., younger than age six and not in kindergarten), and who receive services from other publicly funded programs. First, it requires the director of any state agency that administers programs for such children to obtain an SSID code for each of those children. The act specifically names the Directors of Health, Job and Family Services, Mental Health, and Developmental Disabilities, but it also states that its provisions apply to "the director of any state agency that administers a publicly funded program providing services to children younger than compulsory school age." In addition, it specifically directs the EMIS contractor to transmit those codes to the Department of Education. The act also requires state agencies to submit to the Department information relating to services to those children using their unique SSID codes. Finally, the act directs public schools, in which those children eventually enroll when they reach school age, to use those same codes to report data to the Department.

### **Handling and use of data**

The act specifies that the personally identifiable information about a child younger than compulsory school age maintained in EMIS or in the files of another agency is not a public record under state Public Records Law.<sup>39</sup> Rather, it states that release of that data is subject to the federal Family Educational Rights and Privacy Act.<sup>40</sup> Under that law, any entity that receives any federal funding generally may not release a student's personally identifiable information without prior consent. However, the federal law also provides some very specific exceptions under which student data may be released. One of those exceptions permits release to a research entity on behalf of an agency to evaluate the agency's programs. Accordingly, the act specifically authorizes a

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<sup>38</sup> R.C. 3701.62, not in the act. "Help Me Grow" is a federally funded program to assist young children with developmental disabilities before they enter school.

<sup>39</sup> The pre-existing EMIS statute also states that any data collected or maintained through EMIS that identifies an individual student is not a public record (R.C. 3301.0714(I)).

<sup>40</sup> 20 U.S.C. 1232g.

state agency that administers an early childhood program to use student data contained in the combined EMIS data repository to conduct research and analysis designed to evaluate the effectiveness of and investments in that program, but only in a manner that complies with federal law.

### **Body mass index screening program**

(R.C. 3301.922, 3302.032, 3313.674, 3314.03(A)(11)(h), 3314.15, 3326.11, and 3326.26)

The act eliminates the requirement that a school district, community school, STEM school, or chartered nonpublic school obtain a waiver from the state in order to opt out of screening students for body mass index (BMI) and weight status category. Under prior law, this screening was mandatory, but a district or school that determined it was unable to conduct the screening could submit an affidavit to the Superintendent of Public Instruction attesting to that fact. The state Superintendent had to grant the waiver upon receiving the affidavit, and had no discretion to deny a waiver. Essentially, then, the act eliminates the need for districts and schools that do not wish to conduct the screening to process a waiver request. The screening becomes a local option instead of a state requirement with a formal opt-out procedure.

#### **Parameters of optional screenings; parental opt-out**

The general parameters for conducting the optional BMI and weight status screening remain the same as previously specified for the mandatory screening. The screenings are still limited to students in grades K, 3, 5, and 9. And parents still may opt their children out of the screening by submitting a signed statement indicating that the parent does not wish to have the child undergo it.

The act also retains the previous options for districts and schools. They may choose to conduct the screening themselves, to engage a contractor to do it, or to request parents to obtain the screening from a provider selected by the parent and then submit the results. If the district or school chooses the last option, it must provide parents with a list of providers and information about screening services available in the community to those who cannot afford a private provider. If the district or school chooses to conduct the screening itself or to engage a contractor, it must ensure that each student is screened alone and not in the presence of other students or staff.

As with mandatory screening, a district or school that elects to have its students screened must keep each student's individual screening result confidential, and may not report the result to any person other than the student's parent. The district or school must notify parents of any health risks associated with their child's screening result and provide parents with information about appropriately addressing the risks. This

information may include documents, pamphlets, or other resources suggested on a list developed by the Department of Health.

The act strikes two annual deadlines from the law, leaving timing to the discretion of districts and schools: February 1, for providing parents with information about the screening; and May 1, for completing the screening.

### **Reporting data to the Department of Health**

Districts and schools that elect to have the screening must continue to report data to the Department of Health. Because each student's screening result is confidential, the districts and schools must report to the Department of Health *aggregated* student BMI and weight status category data, along with any demographic data required by the Director of Health. As under prior law, the Department may annually publish the data, aggregated by county. For counties where districts and schools are not conducting the screenings, the Department must note that the data is incomplete. The Department remains authorized to share data with other governmental entities for the purpose of monitoring population health, making reports, or public health promotional activities.

### **Report card measure; annual report**

Under the act, whether or not a school district, community school, or STEM school is implementing the BMI and weight status screenings remains part of a newly required report card measurement of student health-related matters. This measurement, which continuing law requires the State Board of Education to include on report cards beginning with the 2012-2013 school year, must encompass not only whether the district or school is conducting the screenings, but also (1) student success in meeting benchmarks in state physical education standards, (2) compliance with local wellness policies required by federal law, and (3) whether the district or school is participating in the state physical activity pilot program.

The act also retains the requirement that the Department of Education issue an annual report on districts' and schools' implementation of the screening. But where prior law directed the Department to report on schools' compliance with the state requirement, the act directs the Department to report on schools' participation in the option to screen. As under prior law, the report also must include any data regarding student health and wellness collected in conjunction with the screenings.

## **Sale of beverages in schools**

(R.C. 3313.816)

The act exempts milk from the requirement of continuing law that public and chartered nonpublic school food service programs, school vending machines, and school-affiliated stores must make at least 50% of available beverages consist of water or other beverages that contain less than 10 calories per 8 ounces. This appears intended to align Ohio law with federal regulations promulgated under the National School Lunch Act, which prohibit schools participating in the federal school lunch program from "directly or indirectly" restricting the sale of milk "at any time or in any place on school premises or at any school-sponsored event."<sup>41</sup>

## **School facilities programs**

### **Background**

The Ohio School Facilities Commission administers several programs that provide state assistance to school districts and community schools in constructing classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's portion of the total cost of the project and priority for funding are based on the district's relative wealth. Districts are ranked by wealth into percentiles. The poorest districts are served first and receive a greater amount of state assistance than wealthier districts will receive when it is their turn to be served based on their respective wealth percentile. Joint vocational school districts are served by the Vocational School Facilities Assistance Program, which is similar to CFAP. Other smaller programs address the particular needs of certain types of districts.

### **Project segments**

(R.C. 3318.034)

A school district is permitted to divide its CFAP project into segments and to proceed with only one or more separate segments of the total project at a time. Thus, a district need not seek voter approval for a bond issue for the complete project all at once. Generally, under continuing law, each segment must consist of new construction or complete renovation of one or more entire buildings and may not leave a building uncompleted.

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<sup>41</sup> 7 C.F.R. 210.10(m)(4).

In addition, prior law stipulated that each segment had to be of such extent that its value equaled at least 4% of the district's tax valuation. The act, however, reduces the required minimum value of each segment to 2% of its tax valuation. The act does not affect the other requirements relating to segment size.

### **Exceptional Needs Program**

(R.C. 3318.37 and 3318.371)

The Exceptional Needs School Facilities Assistance Program provides funding for school districts in advance of their districtwide CFAP projects to construct single buildings in order to address acute health and safety issues. Under prior law, the program was restricted to districts either in the 1st through 75th wealth percentiles or with territories exceeding 300 square miles. There is also a subprogram to provide funding to a district in any wealth percentile for the relocation or replacement of classroom facilities required as a result of air, soil, or water contamination.

The act removes both the land-area size and wealth conditions for participation in the main Exceptional Needs Program, thus, permitting any district that has an acute need for assistance to receive funding. It also continues to permit all school districts, regardless of wealth or geographic size, to receive funding under the subprogram.

### **Expedited Local Partnership Program**

(R.C. 3318.364; conforming changes in R.C. 3318.36)

The Expedited Local Partnership Program permits most school districts that have not been served under CFAP to apply the advance expenditure of district money on approved parts of their districtwide needs toward their shares of their CFAP projects when they become eligible for that program. The local share of the CFAP project and a district's priority for CFAP funding generally are based on the district's percentile ranking at the time it entered into an agreement under the Expedited Program. In other words, the district "locks in" its project share (its percentage of the total CFAP amount) and priority at that time.<sup>42</sup>

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<sup>42</sup> For example, a district ranked at the 63rd wealth percentile when it enters the Expedited Program will be served under CFAP when the 63rd percentile becomes eligible, and it will pay roughly 63% of the project total (unless an alternative formula is required), even if the district moves to the 65th percentile in the intervening period. This provision works the other way, too. If a district moves into a lower percentile after entering the Expedited Program, it will not be eligible for CFAP until CFAP serves its original, higher percentile and it will pay the higher percentage of the total CFAP project cost.

The act authorizes the School Facilities Commission to offer state funding under CFAP to Expedited Local Partnership school districts earlier than they would otherwise be eligible for state funds based on their wealth percentiles. It does not change a district's share, however. This advance priority may be offered only to districts that (1) have actually spent local resources on a portion of their districtwide projects, (2) are ready to undertake further segments or to complete their projects, and (3) have levied a tax or set aside other moneys for maintenance of the facilities acquired under the project. (Continuing law generally requires each district participating in a state classroom facilities program to levy an additional tax of one-half mill for 23 years or generate the equivalent of that amount by some other means.)

The act also specifies that the Commission may offer funding to eligible Expedited Local Partnership districts in the order of their percentile rankings at the time they entered into their agreements, from lowest to highest percentile. In the event that more than one eligible district has the same percentile ranking, those districts must be offered assistance in the order of the date they entered into their agreements, from earliest to latest date.

Finally, the act specifies that an Expedited Local Partnership district may *not* be offered early CFAP funding over the following:

(1) Other districts for which earlier funding offers lapsed and which are now ready to undertake projects. (A district has 13 months to secure voter approval of local funds to pay its share of a project once approved by the Commission before the funding offer lapses. If it does lapse, however, the district has first priority in future years.)<sup>43</sup>

(2) Districts funded under former law ("1990 districts") that are eligible for additional facilities;

(3) Districts receiving funding under the Exceptional Needs Program (as described above); or

(4) Urban districts in the midst of their projects under the Accelerated Urban program.<sup>44</sup>

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<sup>43</sup> R.C. 3318.05 and 3318.054, neither in the act.

<sup>44</sup> The Accelerated Urban program applies to Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo, all of which are either in the midst of or have completed their projects. The other two Big-Eight districts, Canton and Youngstown, were eligible for and began receiving CFAP funding prior to the July 1, 2002, start-up of the Accelerated Urban program. (See R.C. 3318.38, not in the act.)

The act is silent as to whether Expedited Local Partnership districts may receive funding before any of the so-called "next ten" districts. (Each fiscal year, the Commission must determine which districts are likely the next ten districts to be offered CFAP funding, after all of the priority districts have been funded.)<sup>45</sup>

### **State education aid definition**

(R.C. 5751.20)

The act specifies that a school district's "state education aid" for fiscal years 2012 and 2013 includes both its supplemental guarantee payment and its payment for high academic performance, if either is paid to the district. Since the act's effective date of September 24, 2012, is later than the end of fiscal year 2012 (June 30, 2012), presumably the Department of Education will adjust district payments to reflect the act's provisions when it reconciles and finalizes payments for that year.

### **Background**

"State education aid," as defined in R.C. 5751.20, refers to the gross amount of state aid computed for a district, before the deductions for certain resident students educated elsewhere, such as community school, open enrollment, or scholarship (voucher) students. State education aid is used when computing transfer payments to community schools and STEM schools and a district's tangible personal property tax loss reimbursements. For fiscal years 2012 and 2013, most of a district's state operating funding is computed under a temporary "bridge formula," in lieu of a permanent school funding formula. But for each of those two fiscal years, a district also may receive an additional guarantee subsidy and a subsidy for high performing school districts and community schools. Under the guarantee subsidy, a district is paid an extra amount, if necessary, to guarantee that its operating funding is equal to at least the amount of state operating funding, less federal stimulus funding, the district received for fiscal year 2011.<sup>46</sup> Under the other subsidy, a district (or community school) may receive an extra \$17 per student, if its current state report card rating is "excellent with distinction" or "excellent."<sup>47</sup> As noted above, the act adds those two payments (if they are paid) to a district's state education aid for fiscal years 2012 and 2013.

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<sup>45</sup> R.C. 3318.023, not in the act.

<sup>46</sup> Section 267.30.53 of H.B. 153 of the 129th General Assembly.

<sup>47</sup> Section 267.30.56 of H.B. 153 of the 129th General Assembly.

## **TIF notification to JVSDs**

(R.C. 5709.83)

The act states that county, township, or municipal corporation legislative authorities that are preparing to enact a tax increment financing (TIF) resolution must notify affected joint vocational school districts (JVSDs) of the pending TIF legislation according to the same time requirements that apply to notifying other school districts.

Under continuing law, this equates to 45 days' notice before adopting a TIF resolution that would last for more than 10 years or that would authorize a tax exemption in excess of 75% of the increased value of the subject property, and 14 days notice in all other cases.

## **Eye exams for disabled students**

(R.C. 3323.19; Section 733.91)

The act requires the Department of Education annually to notify each school district and community school of the requirement of continuing law to have students with disabilities undergo a comprehensive eye exam within three months after beginning to receive special education and related services. Additionally, the act requires the Department, beginning with the 2012-2013 school year and annually thereafter, to collect from each school district and community school (1) the total number of students who were subject to the requirement to undergo an eye exam, and (2) the total number of those students whom the district or school can verify received the exam. Not later than December 31, 2013, the Department must issue a report to the Governor, the Speaker and Minority Leader of the House, the President and Minority Leader of the Senate, and the chairpersons and ranking minority members of the House and Senate Education Committees on the compliance of school districts and community schools with the eye exam requirement.

## **Background**

Under continuing law, school districts, community schools, and STEM schools must require each student who is identified for the first time as having a disability to undergo a comprehensive eye exam by a licensed optometrist or by a licensed physician (presumably, an ophthalmologist) within three months after beginning any special education services under the individualized education program (IEP) prepared for the student. Newly identified special education students who underwent a comprehensive eye exam in the nine months prior to identification need not have another exam.

The law specifies that neither the state nor the school is responsible for covering the cost of an eye exam, unless a student is entitled to an exam as part of the identification process or provision of subsequent services. Presumably, a student's parent must pay for the exam or otherwise arrange for it if the student is not so entitled. Public schools, in determining whether a student has met the eye exam requirement, may take into account any special circumstances of the student or the student's family that could prevent the student from having the exam before starting special education services. Public schools, however, cannot withhold special education services from a student who does not undergo an eye exam as required.<sup>48</sup>

### **School report cards during admission process**

(R.C. 3313.6411, 3314.03(A)(11)(d), 3326.11, and 3328.24)

The act requires that when a student enrolls in a school district school, community school, STEM school, or public college-preparatory boarding school, the school official responsible for admissions must provide a copy of the school's most recent report card to the student's parent.

### **Calamity days**

(R.C. 3314.08(L) and 3317.01(B))

The act includes "law enforcement emergencies" within the description of a public calamity for which a school (school district, STEM school, chartered nonpublic school, or community school) may be closed. Other public calamities specified by continuing law are: (1) disease epidemic, (2) hazardous weather conditions, (3) inoperability of school buses or other necessary equipment, (4) damage to a school building, or (5) other temporary circumstances because of a utility failure that renders a building unfit for use.

### **Alcohol in higher education culinary courses**

(R.C. 4301.20(O))

The act permits any person who is under 21 and who attends an accredited college or university to possess or consume beer or an intoxicating liquor, provided (1) the person is under the supervision of an instructor of a culinary, food service, or hospitality course and (2) the person is required to taste and expectorate the alcohol for that course.

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<sup>48</sup> R.C. 3323.19. See also [www.iepeyeexam.org](http://www.iepeyeexam.org).

## **Study of licensure requirements for media specialists**

(Section 733.10)

The act directs the Department of Education, by June 20, 2013, to conduct a study of the licensure requirements for educational staff responsible for developing informational sources to support curriculum and literacy development in schools. These staff are probably media specialists, who typically locate and access resources to enhance teachers' lesson plans and assist student learning. The Department and the State Board of Education must use the study to determine any necessary updates or revisions to the licensing of these staff.

## **Achievement assessment scores for 2012-2013**

(Section 733.81)

For the 2012-2013 school year only, the act extends, from 60 to 75 days after administration of the state achievement assessments, the deadline by which the Department of Education or its contractor must report individual scores to school districts. However, the act retains the ultimate deadline of June 15 under continuing law<sup>49</sup> by specifying that scores may not be reported later than June 15, 2013.

## **State Board of Education meetings**

(R.C. 3301.04)

The act repeals the requirement that the State Board of Education hold regular meetings every three months, and instead requires the State Board annually to adopt a calendar by March 31 indicating the dates on which it will hold its regular meetings for the following fiscal year. The act continues to allow the State Board to hold special meetings on dates not indicated on the calendar, but allows notice of these meetings to be delivered by the Board's president, or the president's designee, to Board members electronically or by regular mail, instead of by registered mail as in former law. Under continuing law, notice must be given at least ten days before the special meeting.

## **Nonsubstantive changes**

The act includes the following nonsubstantive changes:

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<sup>49</sup> R.C. 3301.0711(G)(2), not in the act.

(1) Repeals an obsolete law that required boards of county commissioners, until fiscal year 2007, to provide and equip offices for the use of educational service centers (R.C. 3313.37 and repealed R.C. 3319.19);

(2) Removes an obsolete reference to the Center for Early Childhood Development, which no longer exists (R.C. 3301.90); and

(3) Corrects a misspelling with respect to dual enrollment programs (R.C. 3313.6013).

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## II. CHILD CARE PROVISIONS

- Replaces the voluntary child day-care center rating program (known as Step Up to Quality) with a tiered quality rating and improvement system and extends the system to all child care providers.
- Requires all publicly funded child care providers to participate in the tiered quality rating and improvement system by July 1, 2020.
- Modifies the requirements that a person must meet to be a child day-care center administrator.
- Requires, beginning January 1, 2014, that a type B family day-care home seeking to provide publicly funded child care be licensed by the Director of Job and Family Services, rather than be certified by the county department of job and family services, and requires that rules be adopted establishing a plan to facilitate the transition from county certification to state licensure.
- Beginning January 1, 2014, eliminates the process of issuing limited certification to type B family homes and in-home aides.
- Beginning January 1, 2014, requires that an in-home aide undergo a background check as part of the certification process.
- Eliminates obsolete statutory references to type C family day-care homes.
- Relocates, but does not substantively change, various provisions of the law governing child day-care.

## Regulation of child care: background

(R.C. 5104.01, 5104.02, and 5104.31)

The Ohio Department of Job and Family Services (ODJFS) and county departments of job and family services (CDJFSs) are responsible for the regulation of child care providers, other than preschool program and school child programs, which are regulated by the Ohio Department of Education.<sup>50</sup> Child care consists of administering to the needs of infants, toddlers, preschool-age children, and school-age children outside of school hours for any part of the 24-hour day in a place or residence other than a child's own home.

Child care can be provided in a facility, the home of the provider, or the child's home. Not all child care providers are subject to regulation, but a provider must be licensed or certified to be eligible to provide publicly funded child care. The distinctions among the types of providers are described in the table below.

Child Care Providers		
Type	Description/Number of children served	Regulatory system
<b>Child day-care center</b>	Any place in which child care is provided as follows: --For 13 or more children at one time; or --For 7-12 children at one time if the place is not the permanent residence of the licensee or administrator (which is, instead, a type A home).	A child day-care center must be licensed by ODJFS, regardless of whether it provides publicly funded child care.
<b>Family day-care home</b>	<b>Type A home</b> – a permanent residence of an administrator in which child care is provided as follows: --For 7-12 children at one time; or --For 4-12 children at one time if 4 or more are under age 2.  <b>Type B home</b> – a permanent residence of the provider in which child care is provided as follows: --For 1-6 children at one time; and --No more than 3 children at one time under age 2.	A type A home must be licensed by ODJFS, regardless of whether it provides publicly funded child care.  To be eligible to provide publicly funded child care, a type B home must be certified by a CDJFS or, beginning January 1, 2014, licensed by ODJFS in accordance with the act.

<sup>50</sup> R.C. 3301.51 to 3301.59.

Child Care Providers		
Type	Description/Number of children served	Regulatory system
In-home aide	A person who provides child care in a child's home but does not reside with the child.	To be eligible to provide publicly funded child care, an in-home aide must be certified by a CDJFS.

## Tiered quality rating and improvement system

(R.C. 5104.30 and 5104.31)

In accordance with a prior law requirement to establish a voluntary child day-care center quality-rating program, ODJFS implemented a program known as Step Up to Quality.<sup>51</sup> Participation in the program could allow a child day-care center to be eligible for grants, technical assistance, training, or other assistance and become eligible for unrestricted monetary awards for maintaining a quality rating.

Under the act, the voluntary child day-care center quality-rating program is replaced with a tiered quality rating and improvement system. The system is extended to all types of child care providers. The act requires all publicly funded child care providers to participate in the system by July 1, 2020.

### Enhanced reimbursement

In establishing reimbursement ceilings for publicly funded child care, ODJFS is required by continuing law to establish enhanced reimbursement ceilings for child day-care centers that participate in and maintain quality ratings under the tiered quality rating and improvement system. ODJFS also continues to be required to weigh any reduction in reimbursement ceilings more heavily against child day-care centers that do not participate in the system or do not maintain quality ratings. The act applies these requirements to apply to all child day-care providers, not just child day-care centers. The act specifies, however, that the requirements apply to providers that have been given access to the system by ODJFS.

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<sup>51</sup> The Step Up to Quality program was established by rule (O.A.C. Chapter 5101:2-17).

## Child day-care center administrator qualifications

(R.C. 5104.031 (primary), 5104.01, 5104.011, 5104.032, 5104.033, and 5104.38; Section 751.10)

The act modifies the requirements that a person must meet to be an administrator of a child day-care center. Under the act, a person seeking to be an administrator must provide the ODJFS Director with evidence of at least high school graduation or certification of high school equivalency and one of the following:

(1) An associate, bachelor's, master's, doctoral, or other postgraduate degree in child development or early childhood education, or in a related field approved by the Director, from an accredited college, university, or technical college;

(2) A license designated as appropriate for teaching in an associate teaching position in a preschool setting issued by the State Board of Education;

(3) Designation under the career pathways model<sup>52</sup> as an early childhood professional level three;

(4) Two years of experience working as a child-care staff member in a licensed child care program, designation under the career pathways model as an early childhood professional level one, and, not later than one year after being named as administrator, designation under the career pathways model as an early childhood professional level two;

(5) Two years of experience working as a child-care staff member in a licensed child care program and at least four courses in child development or early childhood education from an accredited college, university, or technical college;

(6) Two years of experience working as a child-care staff member in a licensed child care program and a child development associate credential issued by the Council for Professional Recognition;

(7) Two years of training, including at least four courses in child development or early childhood education from an accredited college, university, or technical college;

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<sup>52</sup> The act defines the "career pathways model" as an alternative pathway to meeting the requirements to be a child-care staff member or administrator that does both of the following: (1) uses a framework approved by the ODJFS Director to document formal education, training, experience, and specialized credentials, and certifications, and (2) allows the child-care staff member or administrator to achieve a designation as an early childhood professional level one, two, three, four, five, or six (R.C. 5104.01).

(8) An infant and toddler or early childhood credential from a program accredited by the Montessori Accreditation Council for Teacher Education.

A person who has two years of experience working as a child-care staff member in a child day-care center and is promoted to or designated as administrator of that center has one year from the date of the promotion or designation to complete the educational requirements described above.

### **Previous requirements**

(R.C. 5104.011)

Under prior law, the requirements that had to be met by a person seeking to be a child day-care center administrator were as follows:

(1) The applicant had to show the ODJFS Director both (a) evidence of at least high school graduation or certification of high school equivalency, and (b) evidence of having completed at least two years of training in an accredited college, university, or technical college, including courses in child development or early childhood education; at least two years of experience in supervising and giving daily care to children attending an organized group program; or the equivalent based on a designation as an early childhood professional level three under ODJFS's Step Up to Quality program's career pathways model.

(2) In addition, any administrator employed or designated as such on or after September 1, 1986, had to show evidence of at least one of the following not later than one year after the date of employment or designation:

--Two years of experience working as a child-care staff member in a center and at least four courses in child development or early childhood education from an accredited college, university, or technical college (however, a person who had two years of experience working as a child-care staff member in a particular center and was promoted to or designated as administrator of that center was given one year to complete the required four courses);

--Two years of training, including at least four courses in child development or early childhood education from an accredited college, university, or technical college;

--A child development associate credential issued by the National Child Development Associate Credentialing Commission;

--An associate or higher degree in child development or early childhood education from an accredited college, technical college, or university, or a license designated for teaching in an associate teaching position in a preschool setting issued by the State Board of Education;

--An administrator's credential as approved by ODJFS.

## **Licensure of type B family day-care homes**

(R.C. 5104.03, 5104.11 (repealed), and 5104.31)

Under the act, beginning January 1, 2014, a type B home that seeks to provide publicly funded child care must be licensed by ODJFS rather than certified by a CDJFS. The act removes the statutory term "authorized provider," which referred to a person authorized by a CDJFS to operate a certified type B home. Instead, the act provides that a person responsible for the daily operation of a type B home is an administrator.

Any person seeking to operate a licensed type B home must apply to the ODJFS Director. The application must be made on a form prescribed by the Director. The Director must provide at no charge to each applicant a copy of the applicable child care license requirements of the child day-care law and of the rules adopted under that law. The Director is required to set fees, which must be paid at the time of the license application. Required fees are to be deposited into the General Revenue Fund.

When a license application is filed, the ODJFS Director must investigate and inspect the type B home to determine the license capacity for each age category of children of the type B home and to determine whether the type B home complies with the child care law and rules adopted under that law. When the Director is satisfied that the laws and rules are complied with, a license must be issued. The initial license is designated as provisional and is valid for 12 months unless revoked. The act permits the ODJFS Director to contract with a government or private nonprofit entity to inspect and license type B homes.

The act continues the requirement that the uniform statewide automated child welfare system (SACWIS) be searched for any information concerning any abuse or neglect report that pertains to the applicant, another adult, or a person designated as an emergency or substitute caregiver for the applicant. It continues to require that any information received from SACWIS or a public children services agency be considered. If the information, when viewed within the totality of the circumstances, reasonably leads to the conclusion that the applicant may directly or indirectly endanger the health, safety, or welfare of children, ODJFS is required to deny the application or revoke the type B home license.

The ODJFS Director is required to investigate and inspect the type B home at least once during operation under the provisional license. If the Director determines that the requirements of the child care law and the rules adopted under that law are met, the Director must issue a new license.

Each license must state the name of the licensee, the address of the type B home, and the license capacity for each category of children. A license must include the toll-free telephone number to be used by persons suspecting that the type B home has violated the child care law or rules. A license is valid only for the licensee, address, and license capacity for each age category of child specified on the license.

If the ODJFS Director revokes a license or denies an application for a license, the Director is prohibited from issuing a license to or accepting another application from the owner of the type B home within five years from the date of the revocation or denial. If the Director determines, during the application process, that the license of the owner has been revoked, the investigation of the type B home must cease, and does not constitute denial of the application. All actions of the Director with respect to licensing type B homes, refusal to issue a license, and license revocations must be conducted in accordance with the Administrative Procedure Act.

The act provides that in no case is the ODJFS Director permitted to issue a license if the Director, based on documentation provided by the appropriate CDJFS, determines all of the following apply:

- The applicant previously had been certified as a type B home;
- The CDJFS revoked the applicant's previous certification;
- The revocation was based on the applicant's refusal or inability to comply with the certification criteria;
- The refusal or inability to comply with the certification criteria resulted in a risk to the health or safety of children.

### **Transition from certification to licensure**

(Section 751.30)

On January 1, 2014, the act requires that a person who is operating a certified type B home must be issued a license to operate the type B home. The act requires ODJFS to adopt rules establishing a plan to facilitate the transition of type B homes from certification to licensure.

### **Inspection of licensed type B homes**

(R.C. 5104.04)

The act requires ODJFS to inspect licensed type B homes at least twice during every 12-month period of operation. ODJFS must provide a written inspection report to

the licensee within a reasonable time after each inspection. The licensee must display all written reports of inspections in a conspicuous place in the licensed type B home. Inspections may be unannounced. No person is permitted to interfere with the inspection of a type B home, including reviewing records or interviewing licensees, employees, children, or caretaker parents.

### **Extension of type A home provisions to type B homes**

(R.C. 5104.03, 5104.06, and 5104.11 (repealed))

The act applies to licensed type B homes certain provisions generally applicable to licensed type A homes as follows:

--Includes licensed type B homes as child care providers to which the ODJFS Director must provide consultation, technical assistance, and training to improve programs and facilities providing child care;

--Conforms the type B home licensure process to continuing law requirements governing child day-care centers and type A homes, which are not subject to a licensure renewal process;

--Eliminates prior law provisions that referred to the renewal of type B home certificates.

### **Type B homes with limited certification**

(R.C. 5104.011(G) and 5104.30)

The act eliminates the requirement that the ODJFS Director adopt rules for granting limited certification to type B homes. Beginning January 1, 2014, if a type B home provider is seeking to provide publicly funded child care, the provider must obtain a license from ODJFS for the home.

Under prior law, limited certification could be granted by a CDJFS to type B homes operated by adult providers caring for eligible children who were great-grandchildren, grandchildren, nieces, nephews, or siblings of the provider or for eligible children whose caretaker parent was a grandchild, child, niece, nephew, or sibling of the provider. Limited certification also could be granted to type B homes operated by adult providers for eligible children all of whom are the children of the same caretaker parent. Reduced reimbursement ceilings applied to the publicly funded child care provided by type B homes with limited certification.

## **In-home aides**

### **Background checks**

(R.C. 5104.012 and 5104.013)

Beginning January 1, 2014, the act requires that a CDJFS director, as part of the certification process for an in-home aide, request that the Superintendent of the Bureau of Criminal Identification and Investigation conduct a criminal records check. The act generally prohibits a CDJFS from certifying an in-home aide who has been convicted of or pleaded guilty to certain offenses.

The act removes an extraneous reference to in-home aides in the laws governing background checks of applicants for employment with child day-care centers and type A homes.

### **Limited certification**

(R.C. 5104.011(H))

The act eliminates the requirement that the ODJFS Director adopt rules for a CDJFS to follow in granting limited certification to in-home aides. Beginning January 1, 2014, if an in-home aide is seeking to provide publicly funded child care, the aide must obtain full certification from the CDJFS.

Under prior law, limited certification could be granted by a CDJFS to an in-home aide caring for eligible children who were great-grandchildren, grandchildren, nieces, nephews, or siblings of the provider or for eligible children whose caretaker parent was a grandchild, child, niece, nephew, or sibling of the in-home aide.

### **Reimbursement ceiling**

(R.C. 5104.30)

The act requires that ODJFS adopt rules establishing a reimbursement ceiling for publicly funded child care provided by in-home aides that is 75% of the reimbursement ceiling that applies to licensed type B homes.

## **Obsolete references to type C homes**

(R.C. 109.57, 2923.124, 2923.126, 2923.1212, and 3742.01)

The act eliminates obsolete statutory references to type C family day-care homes. Type C homes were authorized as part of a time-limited pilot program that no longer exists.<sup>53</sup>

## **References to school-age and preschool-age children**

(R.C. 3301.52, 3301.53, 5104.01, 5104.011, 5104.21, and 5104.31)

Instead of referring to "school children" and "preschool children" in the ODJFS child care law, the act refers to "school-age children" and "preschool-age children." Under law unchanged by the act, the Ohio Department of Education remains responsible for licensing school child programs and preschool child programs.

## **Statutory authority for ODJFS rules**

(Sections 751.10 and 751.20)

The act specifies that Revised Code sections cited as the authority for rules adopted under the child care law are deemed to be the sections as renumbered by the act. The act provides that the ODJFS Director is not required to amend any rule previously adopted for the sole purpose of changing the citation of the Revised Code section that authorizes the rule.

## **Conforming and technical changes**

(R.C. 109.57, 2151.011, 2919.227, 2923.124, 2923.126, 2923.1212, 2950.11, 2950.13, 3109.051, 3701.63, 3737.22, 3742.01, 3797.06, 4511.81, 5101.29, 5103.03, 5104.012, 5104.013, 5104.014 (repealed), 5104.022, 5104.03, 5104.032, 5104.033, 5104.034, 5104.035, 5104.036, 5104.037, 5104.038, 5104.039, 5104.04, 5104.041, 5104.053, 5104.054, 5104.06, 5104.08, 5104.09, 5104.13, 5104.32, 5104.35, 5104.36, 5107.60, and 5153.175)

The act includes conforming and other technical changes in a number of statutes to correspond with the act's changes in the child care law, particularly with respect to the transfer of type B home certification from CDJFSs to licensure by ODJFS.

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<sup>53</sup> Type C family day-care homes were authorized under a two-year pilot program created by Sub. H.B. 62 of the 121st General Assembly. Am. Sub. S.B. 160 of the 121st General Assembly lengthened the pilot program to three years. Sub. H.B. 407 of the 123rd General Assembly extended the pilot program an additional three years, through March 28, 2003.

## Table of renumbered sections

The act relocates, but does not substantively change, a number of provisions of the Revised Code governing child care. The table below describes these provisions and identifies where they are relocated.

Subject	Prior section	New section
Rules governing child day-care centers	5104.011(A), 5104.014	5104.015
Rules establishing minimum requirements for child day-care centers	5104.011(D)	5104.016
Rules governing type A homes	5104.011(F)	5104.017
Rules governing type B homes	5104.011(G)	5104.018
Rules governing in-home aides	5104.011(H)	5104.019
Examinations by health professionals	5104.011(I)	5104.0110
Notice and copies of rules	5104.011(J) and (K)	5104.0111
Nondiscrimination	5104.011(L)	5104.0112
Physical requirements for child day-care centers	5104.011(B)(1) and (2)	5104.032
Staffing requirements for child day-care centers	5104.011(B)(3) and (E)	5104.033
Specialized staffing requirements for child day-care centers	5104.011(C)(1)	5104.034
Educational requirements for administrators of child day-care centers	5104.011(B)(4)	5104.031 (until 1/1/14) 5104.035 (after 1/1/14)
Educational requirements for staff of child day-care centers	5104.011(B)(5)	5104.032 (until 1/1/14) 5104.036 (after 1/1/14)
Continuing education requirements	5104.011(B)(6)	5104.033 (until 1/1/14) 5104.037 (after 1/1/14)
Child day-care center records	5104.011(C)(2)	5104.038
Parental access to child day-care centers	5104.011(C)(3)	5104.039
Smoking prohibition	5104.015	5104.25
Type B home certification	5104.11	repealed and substantive provisions consolidated with 5104.03 or in the two new sections below

Subject	Prior section	New section
Type B home fire inspections	5104.11(D)	5104.052
Readability of materials provided by ODJFS	5104.11(E)	5104.14

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### III. DEVELOPMENTAL DISABILITIES PROVISIONS

- Declares the state's policy to be that employment services for individuals with developmental disabilities be directed at placement in the community in positions in which these individuals are integrated with other workers.
- Requires state agencies that provide employment services to individuals with developmental disabilities to implement the employment policy and requires the Department of Developmental Disabilities to coordinate implementation.
- Requires, starting at age 14, that the individualized education program for a child with a disability include goals related to employment in a competitive environment in which workers are integrated regardless of disability.
- Restores provisions, which were repealed by another enactment, specifying that (1) an employee of a county board of developmental disabilities may be a member of the governing board of either a political subdivision or an agency that does not provide specialized services to persons with developmental disabilities, and (2) the county board may contract with the governing board even though its membership includes a county board employee.

#### Employment services

(R.C. 5123.022)

The act declares it to be the state's policy that employment services for individuals with developmental disabilities be directed at placement whenever possible of each individual in a position in the community in which the individual is integrated with the employer's other workers who are not developmentally disabled. The policy must be implemented by the Departments of Developmental Disabilities, Education, Mental Health, and Job and Family Services; the Rehabilitation Services Commission; and each other state agency that provides employment services to individuals with developmental disabilities. These agencies may adopt rules to implement the policy.

The Department of Developmental Disabilities is to coordinate the actions taken by state agencies to comply with the state's policy, track progress toward full implementation of the policy, and submit an annual report to the Governor. Agencies must collaborate within their divisions and with each other to ensure that state programs, policies, procedures, and funding support competitive and integrated employment of individuals with developmental disabilities.

The act states that the policy is intended to promote the right of each individual with a developmental disability to informed choice, but nothing in this provision requires any employer to give preference in hiring to an individual because the individual has a disability.

### **Individualized education programs**

(R.C. 3323.011)

The act requires, starting at age 14, that the individualized education program (IEP) for a child with a disability include goals related to employment in a competitive, integrated environment. State and federal law both require a school district to ensure that an IEP is developed and in effect for each child enrolled in the district who is identified as having a disability. The IEP prescribes the services the child needs and is entitled to under federal law.<sup>54</sup>

Under law modified by the act, the first IEP in effect when a child reaches a specified age must include a statement describing appropriate measurable post-secondary goals based on age-appropriate transition assessments related to training, education, employment, and independent living skills. The act reduces to age 14 (from 16) the age when this IEP requirement is applicable for the child. Regarding the employment-related goal of the child's IEP, the act instead specifies that the IEP must include a statement describing appropriate measurable post-secondary goals based on age-appropriate transition assessments related to employment in a competitive environment in which workers are integrated regardless of disability.

### **County board employees serving as members of governing boards**

(R.C. 5126.0222)

The act restores two provisions of prior law repealed by H.B. 487 of the 129th General Assembly (the general mid-biennium review). The restored provisions specify the following:

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<sup>54</sup> 20 U.S.C. 1414.

(1) That an employee of a county board of developmental disabilities may be a member of the governing board of either a political subdivision, including a board of education, or an agency that does not provide services designed and operated to serve primarily individuals with mental retardation and developmental disabilities;

(2) That the county board is authorized to contract with the governing board even though its membership includes a county board employee.

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## **IV. WORKFORCE DEVELOPMENT PROVISIONS**

### **State Workforce Policy Board**

- Changes the composition and structure of the State Workforce Policy Board.
- Transfers supervision and administration of the state workforce development system from the Director of Job and Family Services to the State Workforce Policy Board.
- Transfers the authority to allocate and pay funds to local administration of workforce development activities from the Director of Job and Family Services to the State Workforce Policy Board.
- Allows the State Workforce Policy Board to assess fees for specialized services requested by an employer.
- Requires every state agency, board, or commission to provide the State Workforce Policy Board with any information or assistance the board requests in furtherance of workforce development activities.
- Requires local workforce development plans to be approved by the State Workforce Policy Board.
- Expands the purposes that local workforce development plans must accomplish.
- Eliminates certain requirements of the workforce development system regarding locally designed family services systems and counties and municipalities.
- Permits boards of county commissioners to provide electronically workforce development activities in a local area (One-stop System).
- Eliminates the requirement that at least one representative from a county department of job and family services staff a One-stop System for workforce development.

- Eliminates certain state law limits on the Governor's allocation of money received under the federal "Workforce Investment Act of 1998."

### **Registered apprenticeships**

- Increases the minimum age at which an individual may be an apprentice to include an individual above 16 years of age when a higher minimum age standard is otherwise fixed by law.
- Permits the Ohio Apprenticeship Council to recommend, rather than establish as under prior law, minimum standards for apprenticeship programs and rules as may be necessary to carry out the Ohio Apprenticeship Law.
- Eliminates the Council's authority to terminate registered apprenticeship agreements that are not in compliance with the applicable standards and instead requires the Council to consult with the Executive Secretary regarding termination.
- Separates the Executive Secretary from the Council by placing the Executive Secretary in the Council Office, and modifies the Executive Secretary's duties to reflect that separation.
- Eliminates the Executive Secretary's duty to issue certificates of completion of apprenticeship in accordance with the Council's standards.

### **Workers' compensation and learn to earn**

- Allows an otherwise eligible learn to earn program participant to receive unemployment compensation benefits while participating in the program.
- Requires a learn to earn program participant to comply with the Department of Job and Family Services' registration requirements and permits participation in the program for a period not to exceed 24 hours a week for a maximum of six weeks.
- Allows a learn to earn program participant who suffers an injury or contracts an occupational disease in the course of and arising out of participation in the program to receive compensation and benefits under the Workers' Compensation Law.
- Exempts from liability for an injury suffered or occupational disease contracted, except with respect to intentional torts, the Department of Job and Family Services, any established learn to earn program, or any entity conducting the training under that program.
- Permits the Department of Job and Family Services to establish a separate workers' compensation coverage policy for learn to earn participants.

## **Office of Workforce Transformation**

- Authorizes the Office of Workforce Transformation to create a web site to help link energy companies with trained workers and to provide information on industry compatible curriculum and training.
- Authorizes the Office of Workforce Transformation to work with veterans to match training and skills to needed jobs in industries, including to the oil and gas industry.

## **State Workforce Policy Board**

### **Composition of the State Workforce Policy Board**

(R.C. 6301.04)

Continuing law requires the Governor to establish the State Workforce Policy Board (State Board) and to appoint members to the board. There is no designated minimum or maximum number of members on the State Board. The act requires the Governor to designate nine members of the State Board to be voting members. The voting members must be chosen in such a way that a majority of the voting members represent business interests. The Governor may appoint more members, but they will be ex-officio members.

### **Authority to establish, administer, and supervise workforce development**

(R.C. 6301.02, 6301.03, and 6301.04)

The act transfers from the Director of Job and Family Services to the State Workforce Policy Board the duty to establish and administer a workforce development system and requires the Director of Job and Family Services to assist the State Board in this duty.

The act also eliminates the requirement that the workforce development system be designed to provide leadership, support, and oversight to locally designed family services systems. The act retains this requirement with respect to locally designed workforce development systems. The act also removes the requirement that the workforce development system be designed to provide the maximum amount of flexibility and authority to counties and municipal corporations.

While the Director of Job and Family Services retains authority to adopt rules to establish a program or pilot program for providing workforce development activities, the act gives the State Board final approval of any such program.

## **Enumerated powers**

(R.C. 6301.04)

The act gives the State Workforce Policy Board the power to do all of the following:

- Coordinate state workforce development activities through oversight and policy direction;
- Adopt rules necessary to administer state workforce development activities;
- Adopt rules necessary to audit and monitor subrecipients of the workforce development system grant funds;
- Designate local workforce investment areas;
- Develop a unified budget for state and federal workforce funds;
- Establish a statewide employment and data collection system;
- Develop statewide performance measures for workforce development and investment;
- Develop a state workforce development plan;
- Prepare the annual report to the U.S. Secretary of Labor as required by the federal "Workforce Investment Act" (WIA);
- Carry out any additional functions, duties, or responsibilities assigned by the Governor.

## **Authority to direct payments for local workforce development activities**

(R.C. 6301.03)

Under the act, the Director of Job and Family Services may, at the direction of the State Workforce Policy Board, allocate and pay funds received pursuant to WIA, the federal "Wagner-Peyser Act" and the workforce development system for local workforce development activities. Prior law allowed the Director to allocate those funds without direction by the State Board.

The act eliminates certain state law limits on the Governor's allocation of money received under WIA. The state receives funds under Title I of WIA for adults,

dislocated workers, and youth. Prior state law prohibited the Governor from allocating more than 15% of state matching funds for statewide activities and prohibited the Governor from allocating more than 25% of the funds received for dislocated workers, for rapid response activities. The act eliminates these restrictions from state law, though they remain in WIA at 29 U.S.C. 2853 and 2863.

The act also allows the State Board to assess fees for specialized services requested by an employer. The Director of Job and Family Services, local areas,<sup>55</sup> counties, and municipal corporations are already allowed to assess such fees under continuing law.

### **Assisting the Board**

(R.C. 6301.02 and 6301.04)

The act requires state agencies to provide assistance and information to the State Workforce Policy Board when that information or assistance is requested in furtherance of workforce development activities. Continuing law requires state agencies to provide such assistance and information to the Director of Job and Family Services.

The act also requires all state agencies engaged in workforce development activities to assist the Board in the performance of its duties. Continuing law requires the Director of Job and Family Services to assist the State Board.

### **Preparation of local workforce development plans**

(R.C. 6301.07)

Continuing law requires every local workforce policy board to prepare a workforce development plan with the agreement of the chief elected official of the local area served by the local board and after holding hearings that allow public comment and testimony. The act further requires that the local board prepare the workforce development plan under the direction and approval of the State Workforce Policy Board.

The act also expands the purposes the plan must accomplish. Under continuing law, the plan must identify the job skills necessary to obtain projected employment opportunities. The act additionally requires that the plan identify the performance

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<sup>55</sup> For purposes of the state workforce development system, a "local area" is a municipal corporation authorized to administer WIA, a county, or a consortium of counties and municipal corporations (possibly some in another state but sharing a labor market (R.C. 6301.01(A))).

character necessary to obtain those opportunities and that the plan identify the skills and character necessary to succeed in those opportunities.

### **One-stop System**

(R.C. 6301.08)

The act modifies the current One-stop System requirement that municipal corporation officials and boards of county commissioners ensure that a physical location is available in the local area for workforce development activities by allowing for an alternative: officials or boards can instead choose to ensure those activities are available through electronic means. Any activities provided by electronic means must be approved by the State Workforce Policy Board.

The act also eliminates the current requirement that at least one representative from a county department of job and family services staff a One-stop System to represent all of the county family service agencies within the local area.

### **State of Ohio's workforce report**

(R.C. 6301.10)

The act transfers from the Director of Job and Family Services to the State Workforce Policy Board the duty to prepare and distribute a state workforce report. The act also requires the reports once a year rather than quarterly as under prior law, and adds the Commission on Hispanic-Latino Affairs to the list of recipients of the report, starting January 1, 2013. Finally, the act requires all state agencies engaged in workforce development activities to assist the State Board in preparing the report.

### **Administration of Ohio's registered apprenticeship system**

(R.C. 4139.01, 4139.03, 4139.04, and 4139.05)

#### **Apprentices**

The act increases the minimum age at which an individual may be an apprentice for purposes of having a registered apprenticeship program to include an individual above 16 years of age when a higher minimum age standard is otherwise fixed by law. Additionally, under the act an individual must participate in a registered apprenticeship program to learn a skilled occupation, pursuant to a registered apprenticeship agreement, rather than being covered by an agreement under prior law, to be considered an apprentice.

## **Ohio Apprenticeship Council duties**

The act permits the Ohio Apprenticeship Council to recommend, rather than establish as under prior law, minimum standards for apprenticeship programs and recommend, rather than issue, rules as may be necessary to carry out the Ohio Apprenticeship Law. The Executive Secretary of the Council, under the act, must register programs that meet the minimum standards established in federal regulations and state rules rather than the Council's minimum standards.

Additionally, the act eliminates the Council's authority to order the Executive Secretary to terminate registered apprenticeship agreements that are not in compliance with the applicable standards. Instead, the Executive Secretary may make such terminations in consultation with the Council.

## **Executive Secretary of the Council**

The act separates the Executive Secretary from the Council. Under continuing law the Director of Job and Family Services appoints the Executive Secretary, and that appointment is subject to confirmation by a majority of the Council. The act places the Executive Secretary within the Council Office, which is the unit within the Department of Job and Family Services that staffs the Council and performs the administrative and oversight functions concerning Ohio's registered apprenticeship system, rather than the Council.

The act also modifies the Executive Secretary's duties. The act eliminates the Executive Secretary's duty to issue certificates of completion of apprenticeship in accordance with the Council's standards. In addition to continuing law duties, under the act the Executive Secretary must implement administrative rules adopted by the Director as necessary for the administration of the registered apprenticeship system. Additionally, the act expands the Executive Secretary's duties with respect to procedures, requiring the Executive Secretary to devise and implement all procedures and minimum standards as are necessary for the administration of the registered apprenticeship system, rather than devising only all necessary procedures and records under prior law. Under the act the Executive Secretary must perform other duties as appropriate under the applicable rules and regulations rather than as the Council directs.

## **Workers' compensation and learn to earn program participants**

(R.C. 4123.391, 4141.01, and 4141.293)

Under the act, a learn to earn program participant is permitted to receive unemployment compensation benefits while participating in the program if the

participant is otherwise eligible for those benefits. A "learn to earn program" is any program established by the Department of Job and Family Services that offers a structured, supervised training opportunity to an eligible unemployment compensation claimant with a designated worksite training provider. The act makes participation in the program voluntary, requires a participant to comply with the Department's registration requirements in accordance with continuing law procedures, and permits participation in the program for a period not to exceed 24 hours a week for a maximum of six weeks. The act excludes participation in a learn to earn program from the definition of "employment" under Unemployment Compensation Law and thus, participation in the program would not be included in the participant's base period for purposes of determining future unemployment eligibility.

If a learn to earn program participant suffers an injury or contracts an occupational disease in the course of and arising out of participating in the program, the participant is entitled to receive compensation and benefits under the Workers' Compensation Law.

Solely for the purpose of providing compensation and benefits under the Workers' Compensation Law, the act makes a learn to earn program participant an employee of the Department and not an employee of the entity conducting training. The Department can either include a learn to earn participant in its own workers' compensation policy, or establish a separate policy with the Bureau of Workers' Compensation (BWC) upon the terms and conditions for insurance to be established by BWC consistent with insurance principles, as is equitable in the view of degree and hazard.

The act makes a claim for compensation and benefits under Workers' Compensation Law the exclusive remedy for a learn to earn program participant or the participant's dependents for injury or occupational disease in the course of and arising out of program participation and exempts from liability, except for intentional torts, the entity conducting the training, the Department, and any learn to earn program established by the Department.

### **Office of Workforce Transformation web site**

(Section 763.10)

The act authorizes the Office of Workforce Transformation to create a web site to help link energy companies with trained workers and to provide information on industry compatible curriculum and training. The act also authorizes the Office of Workforce Transformation to work with veterans to match training and skills to needed jobs in industries, including to the oil and gas industry.

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## HISTORY

ACTION	DATE
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Reported, S. Education	05-08-12
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