



# Ohio Legislative Service Commission

## Final Analysis

William Schwartz

### **Am. Sub. H.B. 416** 130th General Assembly (As Passed by the General Assembly)

**Reps.** Burkley and Hill, Blessing, Brenner, Brown, Derickson, Dovilla, Hall, Hood, Landis, Kunze, Retherford, Roegner, Rosenberger, Stautberg, Thompson, Milkovich, Smith, Bishoff, Boyd, Patmon, Scherer, Sheehy, Stebelton, Batchelder

**Sens.** Coley, Sawyer, Brown, Eklund, Hite, Lehner, Obhof

**Effective date:** Emergency, March 26, 2014

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## ACT SUMMARY

- Requires the Department of Education to waive up to four additional days a school is closed due to a public calamity (such as hazardous weather conditions) for the 2013-2014 school year for a school district, STEM school, or chartered nonpublic school, as long as the district or school has made up or has invoked plans to make up at least four days and affirmed its intention to request the additional waived days in a resolution (waives closed days 10 through 13).
- For the 2013-2014 school year, authorizes the Superintendent of Public Instruction to waive compliance with the minimum school year requirement for a school operated by a county board of developmental disabilities.
- For the 2013-2014 school year, authorizes schools to make up unwaived calamity days by lengthening one or more other school days in half-hour increments.
- Permits school districts, STEM schools, and chartered nonpublic schools to update their contingency plans for making up unexcused days at any time during the 2013-2014 school year and to include in their plans online lessons or paper lesson "blizzard bags" as a means to make up days.
- Requires the Department of Education to accept and consider applications for the make-up of unexcused calamity days using online lessons and paper lesson "blizzard bags," for the 2013-2014 school year, at any time after August 1, 2013.

- For the 2013-2014 school year, permits a school district to excuse graduating twelfth-grade students from attendance in school for any time that the students' schools are open for instruction after the scheduled graduation ceremony or culminating event, as a result of adding time to the school calendar to make up calamity days.
- Extends the deadlines for return of the elementary achievement assessment scores for the 2013-2014 school year to June 16 for third-grade assessments and June 30 for all other assessments.

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## CONTENT AND OPERATION

### **Additional calamity days for school districts, STEM schools, and chartered nonpublic schools**

The act provides for the conditional waiver of up to four calamity days for school districts, STEM schools, and chartered nonpublic schools, in addition to the five calamity days permitted under continuing law in effect until July 1, 2014. Under the act, the Department of Education must waive up to four additional days that a school operated by a school district, a STEM school, or a chartered nonpublic school was closed for instruction during the 2013-2014 school year, as long as the following conditions are met:

(1) The district or school was closed due to public calamity;

(2) The district or school has made up or has invoked plans to make up at least four other closed days, as specified in its 2013-2014 contingency plan or through other adjustments to the school calendar; and

(3) The district board, STEM governing body, or nonpublic school governing authority has affirmed its intention to request the waiver of additional waived days in a resolution adopted in a regular or special meeting of the board, governing body, or governing authority.

A calamity day is a day a school is scheduled to be open for instruction but due to a "public calamity" the school is closed. Permitted public calamities are disease epidemic, hazardous weather conditions, law enforcement emergencies, inoperability of school buses or other equipment necessary to the school's operation, damage to a school building, or other temporary circumstances due to utility failure rendering the school building unfit for school use.<sup>1</sup> Generally, under law in effect until July 1, 2014, unless a school is scheduled to be open for instruction more days than the minimum number

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<sup>1</sup> The version of R.C. 3317.01(B) in effect until July 1, 2014, not in the act.



required by law, if it has used more calamity days than the five permitted, the school will have to make up those days. A school district must meet the minimum number of instruction days (182) in order to qualify for state operating funds for the next fiscal year.<sup>2</sup> A STEM school also must meet the minimum number of days to qualify for state funding during the current school year.<sup>3</sup> Under a rule of the State Board of Education, chartered nonpublic schools are subject to the same minimum school year requirement and are required to be open for instruction for the same number of days as a school operated by a school district or STEM school.<sup>4</sup> The act waives four calamity days in addition to the five already authorized for the 2013-2014 school year toward meeting those requirements.<sup>5</sup>

But, in order to qualify for the act's extra waived days, a district or school first must have made up or must have invoked plans to make up four more days. That means that a district or school must be closed due to a public calamity for more than nine days before it can qualify to use any of the act's extra waived days (the first five waived by continuing law in effect until July 1, 2014, and the remaining four made up in some fashion). In other words, only closed days 10 through 13 can qualify as additional waived calamity days under the act.

### **Schools operated by county boards of developmental disabilities**

For the 2013-2014 school year, the act authorizes the Superintendent of Public Instruction to waive compliance with the minimum school year requirement for a school operated by a county board of developmental disabilities.<sup>6</sup>

### **Make-up of calamity days in half-hour increments**

The act temporarily allows a school district, STEM school, or chartered nonpublic school to increase the length of one or more other school days in increments of one-half hour to make up the unwaived hours or days that the school was closed due to a calamity.<sup>7</sup> Law in existence prior to September 29, 2013, permanently allowed schools to

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<sup>2</sup> The version of R.C. 3317.01(B) in effect until July 1, 2014.

<sup>3</sup> See generally R.C. Chapter 3326., not in the act.

<sup>4</sup> Ohio Administrative Code (O.A.C.) 3301-35-12.

<sup>5</sup> Section 733.10 of Am. Sub. H.B. 59 of the 130th General Assembly, amended in Sections 1 and 2 of the act.

<sup>6</sup> Section 8.

<sup>7</sup> Section 3.



make up time in this manner.<sup>8</sup> The act restores that option for the 2013-2014 school year. It also specifies that any instruction time added in half-hour increments on or after January 1, 2014, may count toward compliance with the minimum school year requirement.

## Contingency plans

Law in existence prior to September 29, 2013, also required school districts and STEM schools, and probably chartered nonpublic schools, to submit by September 1 of each year a contingency plan to make up five school days for which the school was closed due to a public calamity. Under that law, a district or school could plan to make up those five days as whole days or added half-hour increments (as temporarily reinstated by the act).<sup>9</sup> Presumably, school districts and schools filed their contingency plans in accordance with that provision of law prior to the provision's repeal later that month.

The act explicitly permits a school district, STEM school, or chartered nonpublic school that filed a contingency plan on or prior to September 1, 2013, as required under former law, to update that contingency plan at any time during the 2013-2014 school year.<sup>10</sup> It also permits a school to include in its contingency plan online lessons or paper lesson "blizzard bags" as a means to make up time that the school was not open for instruction due to a public calamity (see below).<sup>11</sup>

## Online and paper "blizzard bag" make-up lessons

Continuing law allows a district or school to make up no more than three whole days through the use of online lessons or paper lesson "blizzard bags" (see "**Background**" below). In order to use this option, a district or school is required to submit a separate plan to the Department of Education by August 1 of the school year for which the plan is in force. The act requires the Department of Education to accept and consider applications for online lessons and paper lesson "blizzard bags" for the 2013-2014 school year at any time after August 1, 2013.<sup>12</sup>

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<sup>8</sup> R.C. 3313.482 as it existed prior to September 29, 2013, not in the act. That section was repealed effective on that date by Am. Sub. H.B. 59 of the 130th General Assembly.

<sup>9</sup> R.C. 3313.482 as it existed prior to September 29, 2013.

<sup>10</sup> Section 7.

<sup>11</sup> Section 4(A).

<sup>12</sup> Section 4(B).



## **Excusal from attendance for twelfth-grade students**

### **After graduation**

For the 2013-2014 year only, the act permits a school district to excuse graduating twelfth-grade students from attendance in school for any days or hours that the students' schools are open for instruction after the district's scheduled graduation ceremony, as a result of adding make-up days or hours to the school calendar. In other words, if a school requires attendance after the district's scheduled graduation ceremony as a result of making up time for which the school was closed due to a public calamity, the act authorizes the district to excuse graduating twelfth-grade students from attendance for that time. The act adds a statement that a scheduled graduation ceremony includes any ceremony designated as a culminating event for twelfth-grade students by a joint vocational school district's board of education.<sup>13</sup>

The act also states that a school district that excuses graduating twelfth-grade students from attendance after the district's scheduled graduation ceremony in accordance with the act's provisions cannot be considered to have failed to comply with the minimum school year requirement.

As noted under "**Background**" below, continuing law permits school districts to excuse twelfth-grade students for up to three days. It appears that the act's permitted excusal days are in addition to these three days.

### **Prior to graduation**

The act states that, for the 2013-2014 year, a school district board may excuse twelfth-grade students from attendance in school for any school day *prior* to the district's scheduled graduation ceremony only (1) in accordance with the State Board of Education's rules on excused absences for individual students (such as illness or college visitation), (2) if the students' schools are closed to all students for days or during hours they are scheduled to be open for instruction, or (3) due to a public calamity.<sup>14</sup> That is, except for those specific reasons for nonattendance, if a district adds days prior to the scheduled graduation ceremony, twelfth-grade students must attend school those days.

## **Extension for return of achievement assessment scores**

For the 2013-2014 school year only, the act extends the deadline by which the Department of Education, or a contractor of the Department, must return the student

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<sup>13</sup> Section 5(A).

<sup>14</sup> Section 5(B).



scores for the state elementary achievement assessments to school districts and schools, as follows:

(1) For assessments administered to students in the third grade, not later than June 16, 2014.

(2) For assessments administered to students in the fourth, fifth, sixth, seventh, or eighth grades, not later than June 30, 2014.<sup>15</sup>

Under continuing law temporarily suspended by the act, the Department or its contractor must report student assessment scores to districts and schools not later than June 15 of each school year.<sup>16</sup> Also under continuing law not affected by the act, the Superintendent of Public Instruction must designate the dates and times for administration of the achievement assessments.<sup>17</sup> Because of the numerous additional days schools have been closed due to hazardous weather conditions during the current school year, the state Superintendent expanded the "testing window" for the spring elementary achievement assessments by one week, setting the administration dates for April 21 through May 16, 2014.<sup>18</sup>

The state achievement assessments must be administered annually to students enrolled in public schools and to students in nonpublic schools enrolled with a state scholarship in grades three through eight in English language arts and math. Students in grades five and eight must take an assessment in science, and students in grades four and six must take an assessment in social studies.<sup>19</sup>

Neither the act nor the state Superintendent's directive applies to the administration of the Ohio Graduation Tests (OGT) for high school students, which were administered in March 2014.

## Background

Law in effect until July 1, 2014, prescribes a minimum school year based on days for school districts, public STEM schools, and nonpublic schools. While school districts

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<sup>15</sup> Section 6.

<sup>16</sup> R.C. 3301.0711(G)(2), not in the act.

<sup>17</sup> R.C. 3301.0710(C), not in the act.

<sup>18</sup> At the Department of Education home page (<http://education.ohio.gov/>) click on "Media," then under "Media Release Archives" click on "February 2014," and click on the link for "Superintendent Ross Expands Ohio Achievement Assessment Window" for the news release on this action.

<sup>19</sup> R.C. 3301.0710(A), not in the bill.



and STEM schools are, by statute, explicitly subject to the minimum school year requirement, nonpublic schools are not explicitly subject to it. Rather, the State Board has, by rule, made adherence to minimum school year and school day requirements applicable to both chartered and nonchartered nonpublic schools.<sup>20</sup> The new minimum school year based on hours rather than days, in effect beginning with the 2014-2015 school year, expressly applies to chartered nonpublic schools, as well as school districts and STEM schools.<sup>21</sup> For a discussion of the new minimum school year based on hours in effect on July 1, 2014 (not affected by the act), see pp. 222-227 of the LSC Final Analysis for H.B. 59 of the 130th General Assembly.<sup>22</sup>

Until July 1, 2014, unless a public or nonpublic school obtains approval to operate on an alternative schedule, as discussed below, a school must be open for instruction with students in attendance at least 182 school days in a school year. In complying with the 182-day requirement, a school also may count up to four days when classes are dismissed a half-day early (that is, two days) for individual parent-teacher conferences or reporting periods, two days for teacher professional meetings, and up to five days due to a public calamity, such as inclement weather. Taking into account these permitted closings for parent-teacher conferences, reporting, professional development, and calamity days, a school must be open for instruction at least 173 days each year.<sup>23</sup>

In addition, the statute expressly permits school districts to excuse twelfth-grade students for up to three days. It does not state any reasons for such excusal but, presumably, it could be for days at the end of the instruction year similar to the excusal days permitted by the act.

### **Alternative schedules**

As an alternative to operating on a traditional five-hour-a-day, 182-day calendar, a school district may operate a school on a different schedule in order to (1) provide a flexible school day for parent-teacher conferences and reporting days that require more than the four half-days otherwise permitted, (2) operate on a calendar of quarters, trimesters, or pentamesters, or (3) establish a staggered attendance schedule ("split

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<sup>20</sup> See R.C. 3314.03(A)(11)(a), 3313.48, 3313.62, and 3326.11, none in the act; O.A.C. 3301-35-08 and 3301-35-12.

<sup>21</sup> The version of R.C. 3313.48 in effect on July 1, 2014.

<sup>22</sup> At the Generally Assembly's website (<http://www.legislature.state.oh.us/>), under "Current Legislation," search H.B. 59, click on "Bill Analyses" and then click on "Final Analysis."

<sup>23</sup> The versions of R.C. 3313.48 and 3317.01(B) in effect until July 1, 2014.



sessions"). The approval of the Department is required to implement any of these alternative schedules.<sup>24</sup>

If a school district obtains approval to operate an alternative schedule, the school must be open for instruction for at least 910 hours a year. Included within this 910-hour requirement, a school may count two 15-minute daily recess periods for students in grades 1 to 6; ten hours for individualized parent-teacher conferences and reporting periods; ten hours for teacher professional meetings; and the number of hours students are not required to attend because of public calamity days. And, a school operating on an alternative schedule also may excuse twelfth-grade students for up to three days, just as authorized for other districts.

### **Community schools**

Community schools are not subject to the same requirements as school districts and nonpublic schools. Instead, under continuing law, community schools must provide learning opportunities for a minimum of 920 hours per year.<sup>25</sup> They are also subject to their own calamity day provision. Under that law, the Department of Education must waive the number of hours or days of learning opportunities not offered to a student by a community school due to a public calamity so long as the school provides the required minimum of 920 hours of learning opportunities to students during the school year.<sup>26</sup> The act does not affect any of the provisions regarding the minimum school year or calamity day waiver for community schools.

### **Online and paper make-up lessons**

A school district, community school, STEM school, or chartered nonpublic school that needs to make up days (or hours in the case of a community school), in order to comply with the minimum school year requirement, may make up no more than three days (or the equivalent in hours) through online lessons or paper-lesson "blizzard bags."<sup>27</sup>

To make up days via online lessons, a district or school must submit a plan to the Department of Education by August 1 each year. The plan may specify up to three days (or, in the case of a community school, a number of hours up to the equivalent of three

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<sup>24</sup> The version of R.C. 3313.481 in effect until July 1, 2014.

<sup>25</sup> R.C. 3314.03(A)(11)(a) and 3314.08(H)(3), neither in the act.

<sup>26</sup> R.C. 3314.08(H)(4).

<sup>27</sup> See R.C. 3313.88 effective until July 1, 2014, and new R.C. 3313.482, effective on July 1, 2014, neither in the act.



days) that may be made up using lessons posted to the district's or school's web portal or website. In the case of a school district or STEM school, the plan must include the written consent of the union that represents the district's or STEM school's teachers. Students have two weeks to complete an online lesson. If a student does not have computer access at home, and the school does not opt to use paper lessons, the student must make up the lesson using the school's computers after the school reopens.

A district or school may also opt to distribute "blizzard bags," which are paper copies of the lessons posted online. Students must turn in blizzard bag assignments within the same two-week period granted for online lessons.

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## HISTORY

ACTION	DATE
Introduced	01-28-14
Reported, H. Education	01-30-14
Passed House (82-16)	02-19-14
Reported, S. Education	02-26-14
Passed Senate (32-0)	02-26-14
House refused to concur in Senate amendments (40-56)	02-26-14
Senate requested conference committee	02-26-14
House acceded to request for conference committee	02-26-14
Senate agreed to conference committee report (32-0)	03-12-14
House agreed to conference committee report (91-5)	03-12-14

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