



Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 171*

130th General Assembly
(As Reported by S. Education)

Reps. McClain and Patmon, Amstutz, Beck, Becker, Buchy, Burkley, Derickson, Hall, Hayes, Henne, Hill, Hood, Huffman, Retherford, Smith, Thompson, Wachtmann, Bishoff, Barnes, Blair, Boose, Brown, Butler, Conditt, Dovilla, Green, Grossman, Hackett, C. Hagan, Hottinger, Lynch, Milkovich, Pelanda, Roegner, Romanchuk, Scherer, Sears, Slaby, Sprague, Stebelton, Terhar, Young, Batchelder

BILL SUMMARY

- Permits a school district board of education to adopt a policy authorizing students to attend released time courses in religious instruction conducted off school property during regular school hours.
- Permits the district policy to grant up to two units of high school credit for the religious instruction, subject to the district board's evaluation of the courses based on secular criteria.
- Grants immunity from a civil action for damages to a school district, member of a school district board of education, or school district employee for injury allegedly arising during a student's transportation to or from a place of instruction when private transportation is used under a released time policy.

CONTENT AND OPERATION

Released time to attend religious instruction

The bill authorizes a school district board of education to adopt a policy for students to be excused from school to attend a released time course in religious instruction conducted by a private entity off school property. The board may permit a student to be released from school for religious instruction, as long as:

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

- (1) The student's parent or guardian gives written consent for the release;
- (2) The private entity maintains attendance records and makes them available to the district;
- (3) Transportation to and from the place of instruction, including transportation for students with disabilities, is the complete responsibility of the private entity, the student's parent or guardian, or the student;
- (4) The private entity makes provisions for and assumes liability for the student;
- (5) No public funds are expended and no public school personnel are involved in providing the religious instruction; and
- (6) The student assumes responsibility for any missed schoolwork.¹

A student may not be considered absent from school while attending a released time course in religious instruction.

No excusal from "core" courses

However, a student may not be excused from a "core curriculum subject course" to attend a religious instruction course. Continuing law generally requires the completion of a minimum of 20 specific units of study to graduate from a public or nonpublic high school. (School districts may, and many do, require more than 20 units to graduate.) The 20 units make up the Ohio Core Curriculum, including a specified number of units in each of English language arts, health, math, physical education, science, social studies, and American history and government.² Apparently, the bill's prohibition against excusing students from core courses means that a student may not be excused from required classes in those subject areas for a released time course.

The state minimum curriculum also consists of five units that may be chosen from among specific subjects. The bill permits released time religious courses to substitute for some of those "elective" credits (see below). Thus, it seems that a student might be released from some of those "elective" courses.

Credit for religious courses

The bill permits a school district board to grant up to two units of high school credit to a student for the completion of a released time course in religious instruction.

¹ R.C. 3313.6022(A) and (B).

² R.C. 3313.603, not in the bill.

(Under continuing law, a unit of high school credit equals 120 hours of instruction, or 150 hours for a laboratory course. Similarly, one-half unit equals 60 hours of instruction, except in physical education courses, where one-half unit equals 120 hours of instruction.)³ The bill specifies that in determining whether to award credit, the board must evaluate the course based on "purely secular criteria that are substantially the same" criteria used to evaluate similar nonpublic high school courses when a student transfers from a nonpublic high school to a public high school. However, the bill explicitly states that there must be no criteria requiring that religious released time courses be completed *only* at a nonpublic school. Additionally, the decision to award credit for a released time course of religious instruction must be neutral to, and not involve any test for, religious content or denominational affiliation.⁴

The bill also prescribes some criteria that may, but are not specifically required to be, used by a board to determine whether to grant credit for a religious course. They are (1) hours of classroom instruction time, (2) a review of the course syllabus that reflects course requirements and materials used, (3) methods of assessment used in the course, and (4) instructor qualifications, which the bill specifies must be "similar to the qualifications of other teachers within the district."⁵

Finally, the bill permits a district board to substitute credit awarded to a student for a released time course in religious instruction for some of the "elective" units required under the standard minimum high school curriculum. Among the 20 minimum units of study required for a high school diploma are five units that may be chosen (or "elected") from one or any combination of foreign language, fine arts, business, career-technical education, family and consumer sciences, technology, agricultural education, a Junior ROTC program, or additional (non-required) English language arts, math, science, or social studies courses.⁶ The bill specifies that credit in a released time course in religious instruction may be substituted for "the same amount of credit" for one or more of those "elective" subjects.⁷

Immunity from civil liability

The bill provides that a school district, member of a school district board of education, or school district employee is not liable for damages in a civil action for

³ R.C. 3313.603(A).

⁴ R.C. 3313.6022(C).

⁵ R.C. 3313.6022(C)(1) to (4).

⁶ R.C. 3313.603(C)(8).

⁷ R.C. 3313.6022(C).

injury allegedly arising during a student's transportation to or from a place of instruction when private transportation is used under a released time policy. The bill specifies that this provision does not eliminate, limit, or reduce any other immunity or defense an individual may be entitled to by way sovereign immunity, any other provision of state law, or common law.⁸

COMMENT

The constitutionality of released time for religious instruction has been litigated in the Supreme Court of the United States. Such programs have been challenged on the grounds that they might violate the First Amendment of the U.S. Constitution. The Establishment Clause of the First Amendment, which has been made applicable to the states through the Due Process Clause of the Fourteenth Amendment, provides that "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof." In 1952, in *Zorach v. Clauson*, the Court upheld a program in which students were released from school for religious classes that involved no instruction in the public school buildings and no expenditure of public funds.⁹ Even the application materials and attendance records were the responsibility of the religious organizations providing the instruction. In view of those facts, the Court found no violation of the First Amendment. Conversely, six years earlier, in *Illinois v. McCollum*, the Court struck down a released time program in which the public classrooms were turned over during regular school hours to religious instructors.¹⁰ The *Zorach* Court distinguished the later case based on the degree of the public school's involvement (or lack of involvement) in the religious instruction.¹¹

In light of these two decisions, the Ohio Attorney General published an opinion in 1988 advising that school district boards, under their existing general powers to manage and control their schools and to make reasonable rules for their governance,¹² may permit students to be released from school for religious instruction, as long as it comports with the First Amendment and the state religious freedom clause of the Ohio Constitution. The latter provision states "no person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any

⁸ R.C. 3313.6022(D).

⁹ 343 U.S. 306 (1952).

¹⁰ 333 U.S. 203 (1948).

¹¹ 343 U.S., at 314.

¹² R.C. 3313.20 and 3313.47, neither in the bill.



interference with the rights of conscience be permitted."¹³ Accordingly, the Attorney General advised that the instruction must take place off public school premises, public school personnel must assume little or no responsibility for implementation of the program, no public funds may be used for the program, and the program must be applied in a nondiscriminatory manner toward all faiths and religious persuasions.¹⁴

It appears that the constitutionality and legality of the specific authority prescribed by the bill or its application to a particular situation would be analyzed using those principles if the statute or its application were challenged.

HISTORY

ACTION	DATE
Introduced	05-21-13
Reported, H. Education	12-11-13
Passed House (78-15)	01-15-14
Reported, S. Education	---

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¹³ Article I, Section 7, Ohio Constitution.

¹⁴ Ohio Attorney General Opinions 88-001 (1988).

