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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 164\*  
133<sup>rd</sup> General Assembly

## Bill Analysis

[Click here for H.B. 164's Fiscal Note](#)

**Version:** As Reported by Senate Education

**Primary Sponsor:** Rep. Ginter

Mike Niemi, Allison Schoeppner, and other LSC staff

### SUMMARY

#### Religious expression in schools

- Requires public schools to give students who wish to meet for the purpose of religious expression the same access to school facilities given to secular student groups, without regard to the content of the expression.
- Removes a current provision that permits a school district to limit the exercise or expression of religion to lunch periods or other noninstructional time periods.
- Authorizes students enrolled in public schools to engage in religious expression before, during, and after school hours in the same manner and to the same extent that a student may engage in secular activities or expression before, during, and after school hours.
- Prohibits public schools from restricting a student from engaging in religious expression in the completion of homework, artwork, or other assignments.
- Prohibits public schools from rewarding or penalizing a student based on the religious content of the student's homework, artwork, or other assignments.
- Designates the bill's provisions regarding religious expression as the "Ohio Student Religious Liberties Act of 2019."

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\* This analysis was prepared before the report of the Senate Education Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

## School funding adjustments

### Payment for districts with decreases in utility TPP value

- Requires the Department of Education to make a payment, for FY 2020 and 2021, to each city, local, exempted village, or joint vocational school district with more than a 10% decrease in the taxable value of utility tangible personal property (TPP) subject to taxation that has at least one power plant located within its territory.
- Specifies that, in order to qualify for the FY 2020 payment, a district must have experienced the decrease in utility TPP between tax years 2017 and 2019, tax years 2018 and 2019, or tax years 2017 and 2018.
- Specifies that, in order to qualify for the FY 2021 payment, a district must have experienced the decrease in utility TPP between tax years 2017 and 2020 or tax years 2019 and 2020.
- Requires the Tax Commissioner to determine which districts are eligible for this payment no later than ten days after the bill's effective date (for the FY 2020 payment) or May 15, 2021 (for the FY 2021 payment) and to certify specified information to the Department regarding tax valuations for each district eligible for the payment.
- Requires the Department to make FY 2020 payments no later than 14 days after the bill's effective date and to make FY 2021 payments between June 1, 2021, and June 30, 2021.

### Funding adjustment for districts with utility TPP value increases

- Specifies that, if a school district experienced an increase in the taxable value of all utility TPP subject to taxation by the district between tax years 2016 and 2017 and, as a result, had funds deducted from its state education aid, the Department must credit the deducted amount to the district no later than ten days after the bill's effective date.

### Additional payment for school districts

- Requires the Department of Education to make an additional payment to each school district that receives, for FY 2020, a combined amount of foundation funding after state budget reductions and funding from the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act that is less than 94% of its foundation funding for FY 2020 as calculated before state budget reductions.
- Specifies that the amount of this payment is equal to the difference between (1) 94% of the district's foundation funding for FY 2020 as calculated before state budget reductions and (2) the combined amount of foundation funding after state budget reductions and funding from the federal CARES Act.

### Quality Community School Support Program

- Changes the existing criteria for a community school to be designated as a "community school of quality" for the Quality Community School Support Program if its operator

operates community schools in other states by also requiring the school to be in its first year of operation.

## **Other education provisions**

### **Teacher and principal evaluations**

- Permits a school district that did not participate in the teacher evaluation pilot program established for the 2019-2020 school year to continue evaluating teachers on two-year or three-year evaluation cycles even if the district completes an evaluation for them in the 2019-2020 school year without a student growth measure.
- Specifies a teacher who did not have a student growth measure as part of an evaluation for the 2019-2020 school year must remain at the same point in the teacher's evaluation cycle, and retain the same evaluation rating, for the 2020-2021 school year as the 2019-2020 school year.
- Authorizes a school district to choose to complete a principal's performance evaluation for the 2019-2020 school year without using a student growth measure as part of the evaluation.
- Prohibits a school district from using value-added progress dimension data, high-quality student data, or other student academic growth data to measure student learning attributable to a teacher or principal while conducting evaluations for the 2020-2021 school year.

### **Qualify for high school diploma using final course grades in lieu of end-of-course exam scores**

- Permits a student who was scheduled to take or re-take an end-of-course exam in the 2019-2020 school year, but did not do so because the exam was cancelled, to use the student's final course grade in lieu of an exam score to satisfy conditions for a high school diploma.
- Specifies a student who was scheduled to take an end-of-course exam for the first time in the 2019-2020 school year may use a final grade for a course completed in that year, while a student who was scheduled to re-take an exam may use a grade for a course completed in that year or a prior school year.

### **Third-Grade Reading Guarantee**

- For the 2020-2021 school year only, prohibits a school district or school from retaining in the third grade a student who does not attain a passing score on the fall administration of the third grade English language arts achievement assessment under specified conditions
- Prohibits the State Board of Education from reviewing and adjusting upward the promotion score for the third grade English language arts assessment for the 2020-2021 school year, and, instead, requires the use of the 2019-2020 promotion score for the 2020-2021 school year.

- Exempts a teacher assigned to provide intense remediation reading assistance to a student in the 2020-2021 school year under the Third-Grade Reading Guarantee from certain criteria otherwise required under continuing law.

### **Reading improvement plans**

- Exempts public schools from having to establish reading improvement plans for the 2020-2021 school year based on assessment results for the 2019-2020 school year.

### **Academic assessment records for home instructed students**

- Exempts parents of students receiving home instruction from the administrative rule requirement to submit an “academic assessment record” for the 2019-2020 school year to the student’s resident school district superintendent as a condition of allowing the student to continue receiving home instruction for the 2020-2021 school year.

### **Community school sponsor ratings**

- Prohibits the Department from issuing any community school sponsor ratings for the 2019-2020 school year.
- Requires the Department to allow a sponsor to indicate that it could not comply with an applicable law or administrative rule or fully adhere to a quality practice due to the closure of schools.
- Establishes a safe harbor from penalties and sanctions for community school sponsors based on the absence of community school sponsor ratings for the 2019-2020 school year, in which only ratings from previous and subsequent years are considered.
- Allows a community school sponsor to remain eligible in the 2020-2021 school year for any incentives that the sponsor was eligible for in the 2019-2020 school year.

### **Services to special needs students**

- Permits nonclassroom personnel providing professional services to students with disabilities to provide services electronically or via telehealth communication for the balance of the 2019-2020 school year and the entirety of the 2020-2021 school year.
- Permits a teacher who is licensed to teach special education and is employed to teach a public school preschool integrated class prior to the effective date of licensure requirement changes by the State Board of Education to continue to teach a public school preschool integrated class until the teacher retires, resigns, or is reassigned.

### **Remote learning**

- Permits certain public schools that have not otherwise been approved to use a “blended” learning model under continuing law for the 2020-2021 school year to adopt a plan to provide instruction using a “remote” learning model for the 2020-2021 school year.

### **Grade band flexibility**

- Permits a school district to employ or reassign a licensed teacher to teach a subject area or grade level for which the teacher is not licensed for the 2020-2021 school year under specified conditions.

### **Community school governing authorities**

- Permits a person to serve on the governing authority of more than five start-up community schools under specified conditions.

### **Storm shelters**

- Extends from September 15, 2020, to November 30, 2022, the existing moratorium regarding the construction of storm shelters in private and public school buildings.

### **Online bus driver training**

- Requires the Department to develop an online training program to satisfy the classroom portion of pre-service and annual in-service training for school bus driver certification for the 2020-2021 school year.

### **Appropriation**

- Makes an appropriation.

### **Emergency clause**

- Declares an emergency (does not apply to the bill's provisions regarding religious expression in schools, the Quality Community School Support Program, or to the provisions regarding the additional payment for schools).

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## DETAILED ANALYSIS

### RELIGIOUS EXPRESSION IN SCHOOLS

#### **Access to school facilities by religious student groups**

The bill requires a public school (school district, community school, STEM school, and college-preparatory boarding school) to give students who wish to conduct a meeting for the purpose of engaging in religious expression the same access to school facilities as student secular groups, without regard to the content of a student’s or group’s expression.<sup>1</sup>

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<sup>1</sup> R.C. 3320.02(B). See also R.C. 3314.03, 3326.11, and 3328.24 for conforming changes.

## Religious expression at school

Current law prohibits a school district board of education from adopting any policy or rule respecting or promoting an establishment of religion or prohibiting any student from the exercise or expression of the student's religious beliefs. The bill removes a provision of that law permitting a school district to limit the exercise or expression of a student's religious beliefs to lunch period or other noninstructional time periods when students are free to associate.<sup>2</sup>

The bill also enacts a separate new provision stating that a student enrolled in any public school may engage in religious expression "before, during, and after school hours in the same manner and to the same extent that a student is permitted to engage in secular activities or expression before, during, and after school hours."<sup>3</sup>

The bill further prohibits public schools from restricting a student from engaging in religious expression in the completion of homework, artwork, or other written or oral assignments. Grades and scores for those assignments must be calculated using ordinary academic standards of substance and relevance, including any legitimate pedagogical concerns. Moreover, it expressly prohibits public schools from penalizing or rewarding a student based on the religious content of the student's work.<sup>4</sup>

For purposes of its provisions, the bill defines "religious expression" as including any of the following:

1. Prayer;
2. Religious gatherings, including, but not limited to, prayer groups, religious clubs, "see you at the pole" gatherings, or other religious gatherings;
3. Distribution of written materials or literature of a religious nature;
4. Any other activity of a religious nature, including wearing symbolic clothing or expression of a religious viewpoint, provided that the activity is not obscene, vulgar, offensively lewd, or indecent.<sup>5</sup>

## Title

The bill states that its substantive provisions regarding access and religious expression are to be collectively known as the "Ohio Student Religious Liberties Act of 2019."<sup>6</sup>

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<sup>2</sup> R.C. 3313.601.

<sup>3</sup> R.C. 3320.02(A).

<sup>4</sup> R.C. 3320.03.

<sup>5</sup> R.C. 3320.01(B).

<sup>6</sup> R.C. 3320.01(A).

## **Intent statement**

The bill states that the bill is not intended nor shall it be construed to limit or abrogate religious expression of students already guaranteed under the Ohio Constitution and the United States Constitution.<sup>7</sup>

## **Background – current law on religious expression in schools**

Current statutory law expressly permits a district board of education to “provide for a moment of silence each school day for prayer, reflection, or meditation upon a moral, philosophical, or patriotic theme.” However, no student may be required to participate in the moment of silence.

That law also specifies that a district board may not prohibit a classroom teacher from providing in the classroom reasonable periods of time for activities of a moral, philosophical, or patriotic theme. Similarly, no student may be required to participate in the activities, if the activities are contrary to the religious convictions of the student or the student’s parents or guardians.<sup>8</sup>

Neither of these provisions applies to community schools, STEM schools, or college-preparatory boarding schools.

## **SCHOOL FUNDING ADJUSTMENTS**

### **Payment for districts with decreases in utility TPP value**

The bill requires the Department of Education to make a payment, for FY 2020 and 2021, to each city, local, exempted village, or joint vocational school district with more than a 10% decrease in the taxable value of utility tangible personal property (TPP) subject to taxation that has at least one power plant located within its territory. In order to qualify for the FY 2020 payment, a district must have experienced this decrease between tax years 2017 and 2019, tax years 2018 and 2019, or tax years 2017 and 2018. In order to qualify for the FY 2021 payment, a district must have experienced this decrease between tax years 2017 and 2020 or tax years 2019 and 2020.

### **Eligibility determination by the Tax Commissioner**

The Tax Commissioner must determine which districts are eligible for this payment no later than ten days after the bill’s effective date (for the FY 2020 payment) or May 15, 2021 (for the FY 2021 payment).<sup>9</sup> For each district eligible for the payment, the Commissioner must certify the following information to the Department:

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<sup>7</sup> Section 22.

<sup>8</sup> R.C. 3313.601.

<sup>9</sup> Section 9(A)(1) and (B)(1).



1. If the district is eligible for the FY 2020 payment, the district's total taxable value for tax year 2019 and the change in taxes charged and payable on the district's total taxable value for tax year 2017 and tax year 2019;
2. If the district is eligible for the FY 2021 payment, the district's total taxable value for tax year 2020 and the change in taxes charged and payable on the district's total taxable value for tax year 2017 and tax year 2020;
3. If the district is eligible for either payment, the taxable value of the utility TPP decrease and the change in taxes charged and payable on the change in taxable value.<sup>10</sup>

### **Computation of payment amount**

The bill requires the Department, for purposes of computing the payment, to replace the three-year average valuations used in computing a district's state education aid for FY 2019 with the district's total taxable value for tax year 2019 (for the FY 2020 payment) or tax year 2020 (for the FY 2021 payment). It then must recompute the state education aid for FY 2019 without applying any funding limitations enacted by the General Assembly.

The amount of a district's payment is equal to the greater of the following:

1. The lesser of (a) the positive difference between the district's state education aid for FY 2019 prior to the recomputation and the district's recomputed state education aid for FY 2019 and (b) the absolute value of the changes in taxes charged and payable on the district's total taxable value for tax year 2017 and tax year 2019 (for the FY 2020 payment) or for tax year 2017 and tax year 2020 (for the FY 2021 payment); and
2. 0.50 times the absolute value of the changes in taxes charged and payable on the district's total taxable value for tax year 2017 and tax year 2019 (for the FY 2020 payment) or for tax year 2017 and tax year 2020 (for the FY 2021 payment).<sup>11</sup>

### **Deadline for payment**

The Department must make FY 2020 payments no later than 14 days after the bill's effective date and must make FY 2021 payments between June 1, 2021, and June 30, 2021.<sup>12</sup>

### **Funding adjustment for districts with utility TPP value increases**

The bill also specifies that, if a school district experienced an increase in the taxable value of all utility TPP subject to taxation by the district between tax years 2016 and 2017 and, as a result, had funds deducted from its state education aid in accordance with a provision of

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<sup>10</sup> Section 9(A)(2) and (B)(2).

<sup>11</sup> Section 9(A)(3) and (B)(3).

<sup>12</sup> Section 9(C).

former law,<sup>13</sup> the Department must credit the deducted amount to the district no later than ten days after the bill's effective date.<sup>14</sup>

## **Additional payment for school districts for fiscal year 2020**

### **Eligibility for payment**

The bill requires the Department of Education to make an additional payment to each city, local, and exempted village school district that receives an amount of funding from the following two sources combined for FY 2020 that is less than 94% of its foundation funding for FY 2020 (as calculated before reductions in accordance with the Governor's order regarding state budget reductions issued on May 7, 2020):

1. Its foundation funding for FY 2020 after reductions in accordance with the Governor's order; and
2. Its funding from the federal Elementary and Secondary School Emergency Relief Fund established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

### **Payment amount**

The amount of this payment is equal to the difference between the following:

- 94% of the district's foundation funding for FY 2020 as calculated before reductions in accordance with the Governor's order; and
- The sum of the district's foundation funding for FY 2020 after reductions in accordance with the Governor's order and its funding from the federal CARES Act.<sup>15</sup>

## **Quality Community School Support Program**

The bill changes the existing criteria for a community school to be designated as a "community school of quality" for the Quality Community School Support Program if its operator operates community schools in other states by also requiring the school to be in its first year of operation.<sup>16</sup> These schools must also have a sponsor that was rated "exemplary" or "effective" on the sponsor's most recent report evaluation and satisfy either of the following:

1. One of the school's operator's schools received funding through the Federal Charter School Program or the Charter School Growth Fund; or
2. All of the following criteria are satisfied:

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<sup>13</sup> Division (B) of former R.C. 3317.028.

<sup>14</sup> Section 9(D).

<sup>15</sup> Section 19.

<sup>16</sup> Division (B)(3)(c) of Section 265.335 of H.B. 166 of the 133<sup>rd</sup> General Assembly, amended in Sections 3 and 4 of the bill.

- a. One of the school's operator's out-of-state schools performed better than the school district in which the in-state school is located, as determined by the Department of Education;
- b. At least 50% of enrolled students are economically disadvantaged;
- c. The school's operator is in good standing in all states; and
- d. The school's operator does not have financial viability issues preventing it from effectively operating a community school in Ohio.<sup>17</sup>

The Quality Community School Support Program was created for FY 2020 and 2021 in H.B. 166 of the 133<sup>rd</sup> General Assembly. This program provides "community schools of quality" \$1,750 in each fiscal year for each student identified as economically disadvantaged and \$1,000 in each fiscal year for each student who is not identified as economically disadvantaged. H.B. 166 designated four separate types of "community schools of quality," each with its own indicators. Under that act, a school designated as a "community school of quality" maintains that designation for the two fiscal years following the fiscal year in which it receives that designation.<sup>18</sup> For FY 2020, "community schools of quality" have already been designated and funding has already been paid to those schools. Therefore, the bill's change will only impact the process of designating "community schools of quality" for FY 2021.

For a table showing the types of schools that qualify for the program, see pp. 137-138 of the LSC Final Analysis for H.B. 166, at: <https://www.legislature.ohio.gov/download?key=12387&format=pdf>.

## OTHER EDUCATION PROVISIONS

### Teacher and principal evaluations for 2019-2020 school year

The bill permits a school district that did not participate in the teacher evaluation pilot program established for the 2019-2020 school year to continue evaluating teachers on two-year or three-year evaluation cycles, even if the district completes an evaluation for those teachers in the 2019-2020 school year without using a student growth measure. It also specifies that a teacher who did not have a student growth measure as part of an evaluation for the 2019-2020 school year must remain at the same point in the teacher's evaluation cycle, and retain the same evaluation rating, for the 2020-2021 school year as for the 2019-2020 school year.<sup>19</sup> Finally, the bill authorizes a school district to choose to complete a principal's performance evaluation for the 2019-2020 school year without using a student growth measure as part of the evaluation.<sup>20</sup>

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<sup>17</sup> Division (B)(3) of Section 265.335 of H.B. 166 of the 133<sup>rd</sup> General Assembly, amended in Sections 3 and 4 of the bill.

<sup>18</sup> Section 265.335 of H.B. 166 of the 133<sup>rd</sup> General Assembly, amended in Sections 3 and 4 of the bill.

<sup>19</sup> Section 7 of S.B. 216 of the 132<sup>nd</sup> General Assembly, amended in Sections 7 and 8 of the bill.

<sup>20</sup> Section 11.

H.B. 197 of the 133<sup>rd</sup> General Assembly authorized a school district that had not conducted an evaluation of a district employee, including teachers, administrators, or the superintendent, prior to the Director of Health's order "In re: Order the Closure of All K-12 Schools in the State of Ohio" issued on March 14, 2020, to elect not to conduct that evaluation if it was impossible or impracticable to do so.<sup>21</sup>

## **Teacher and principal evaluations for 2020-2021 school year**

The bill prohibits a school district from using value-added progress dimension data, any other high-quality student data as defined by the State Board of Education, or any other student academic growth data to measure student learning attributable to a teacher or principal while conducting evaluations for the 2020-2021 school year. Rather, it requires that a school district use the other factors and components prescribed under continuing law to conduct those evaluations. However, it also states that the bill's provision must not be construed as prohibiting a district from considering as part of an evaluation how a teacher or principal collects, analyzes, and uses student data, including student academic growth data, to adapt instruction to meet individual student needs or to improve the teacher's or principal's practice.<sup>22</sup>

H.B. 197 prohibited using value-added progress dimension data from the 2019-2020 school year to measure student learning attributable to a teacher in that teacher's evaluation.<sup>23</sup>

## **Qualify for high school diploma using final course grades in lieu of end-of-course exam scores**

The bill permits a student who was scheduled to take or re-take an end-of-course exam in the 2019-2020 school year, but did not do so because the exam was cancelled, to use the student's final course grade in lieu of an exam score to satisfy conditions for a high school diploma prescribed under continuing law.

The bill specifies that a student who was scheduled to take an end-of-course exam for the first time in the 2019-2020 school year must use the final grade the student received in that school year, while a student who was scheduled to re-take an exam may use a grade from that school year or a prior school year.<sup>24</sup>

For the purposes of determining whether a student satisfies a condition for a high school diploma, the bill establishes how final grades are equivalent to a competency score and end-of-course exam performance levels. (For more information on how a competency score and exam performance levels satisfy high school diploma conditions, see "**Background**")

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<sup>21</sup> Section 17(M) of H.B. 197 of the 133<sup>rd</sup> General Assembly.

<sup>22</sup> Section 10.

<sup>23</sup> Section 17(E) of H.B. 197 of the 133<sup>rd</sup> General Assembly.

<sup>24</sup> Section 12(A) and (B).

below.) Under the bill any “C” grade or higher is equivalent to a competency score, while final grades are equivalent to exam performance levels as indicated on the following table.<sup>25</sup>

Final Grade	Exam performance level
“A+”, “A”, or “A-”	Advanced
“B+”, “B”, or “B-”	Accelerated
“C+”, “C”, or “C-”	Proficient
“D+”, “D”, or “D-”	Basic
“F”	Limited

The bill also establishes how a pass/fail designation may be used to satisfy high school diploma conditions. It specifies that a fail designation is equivalent to a “F” letter grade and an exam performance level of Limited. For a pass designation, the bill specifies that a student’s school district or school must determine to which exam performance level a student’s performance in the class is equivalent. However, it also specifies that earning a pass designation is equivalent to a competency score.<sup>26</sup>

The bill also specifies that a student who completes a course associated with an end-of-course exam must be considered to have completed an administration of that exam for the purposes of determining whether the student may use an alternative demonstration competency in lieu of attaining a competency score.<sup>27</sup>

Finally, the bill permits a student who completed a course associated with an end-of-course exam to choose to take that exam in a subsequent school year.<sup>28</sup>

## Background

Under continuing law, one way a student who entered ninth grade for the first time on or after July 1, 2014, but prior to July 1, 2019 (the Classes of 2018 through 2022) may qualify for a high school diploma is by attaining a cumulative performance score on the end-of-course exams prescribed by the State Board of Education. The State Board prescribed a system under

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<sup>25</sup> Section 12(B)(1) to (6).

<sup>26</sup> Section 12(A)(2) and (B)(7).

<sup>27</sup> Section 12(C).

<sup>28</sup> Section 12(D).

which a student earns a cumulative performance score by earning points toward graduation based on the student's performance levels on the end-of-course exams.<sup>29</sup>

The following table indicates how a final course grade is equivalent to an exam performance level under the bill, and how many graduation points a student may earn for each exam performance level under continuing law.

Final Grade	Exam performance level	Graduation points
"A+", "A", or "A-"	Advanced	5
"B+", "B", or "B-"	Accelerated	4
"C+", "C", or "C-"	Proficient	3
"D+", "D", or "D-"	Basic	2
"F"	Limited	1

Continuing law also requires a student who entered ninth grade for the first time on or after July 1, 2019 (the Class of 2023 and on), and permits a student in the Classes of 2018 through 2022, to qualify for a high school diploma by attaining a "competency score" on each of the Algebra I and English Language Arts II end-of-course exams and earning at least two state diploma seals. Several of the state diploma seals involve attaining a proficient or higher score on one or more end-of-course exams.

Additionally, a student who does not attain a competency score on both the Algebra I and English Language Arts II end-of-course exams after at least two administrations of those exams is permitted to demonstrate competency in the failed subject areas using one of several alternative options prescribed under continuing law.<sup>30</sup>

## Third-Grade Reading Guarantee

### Retention

For the 2020-2021 school year only, the bill prohibits a school district or school from retaining in the third grade a student who does not attain a passing score on the fall administration of the third grade English language arts achievement assessment. However, it also states that this prohibition applies only if the student's principal and reading teacher agree

<sup>29</sup> R.C. 3313.618(A)(2) and 3301.0712(B), neither in the bill. Information about the State Board's system of graduation points can be found here: <http://education.ohio.gov/Topics/Ohio-s-Graduation-Requirements/18-Points-on-State-Tests>.

<sup>30</sup> R.C. 3313.618(A) and (B), and 3313.6114, neither in the bill.

that other evaluations of the student's skill in reading demonstrate that the student is academically prepared to be promoted to the fourth grade.<sup>31</sup>

### **Promotion scores**

The bill prohibits the State Board of Education from reviewing and adjusting upward the promotion score for the third grade English language arts assessment for the 2020-2021 school year. Instead, it requires the use of the 2019-2020 school year promotion score for the 2020-2021 school year. It then further requires the State Board to resume reviewing and adjusting upward the promotion score in accordance with continuing law for the 2021-2022 school year.<sup>32</sup>

Under continuing law, the State Board must determine the level of achievement on the third grade English language arts assessment that a student must attain in order to be promoted to the fourth grade, and to review and adjust upward the level of achievement required for the Third-Grade Reading Guarantee until it is equal to "proficient." For the 2019-2020 school year the achievement score required on the third grade English language arts assessment for promotion was 683.<sup>33</sup>

### **Remediation teacher qualifications**

The bill exempts a teacher assigned to provide intense remediation reading assistance to a student in the 2020-2021 school year under the Third-Grade Reading Guarantee from having to meet the criteria otherwise required under continuing law.<sup>34</sup>

Under continuing law, for any student that is retained under the Third-Grade Reading Guarantee a district must provide intense remediation services to help that student read at grade level.<sup>35</sup> One required service is that the student will be assigned a teacher who satisfies one or more of the following criteria:

1. The teacher holds a reading endorsement on the teacher's license and has attained a passing score on the corresponding assessment for that endorsement;
2. The teacher has completed a master's degree program with a major in reading;
3. The teacher was rated "most effective" for reading instruction consecutively for the most recent two years based on assessments of student growth measures developed by a vendor and that is on the list of student assessments approved by the State Board;

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<sup>31</sup> Section 18.

<sup>32</sup> Section 13(A).

<sup>33</sup> <http://education.ohio.gov/Topics/Learning-in-Ohio/Literacy/Third-Grade-Reading-Guarantee/Third-Grade-Reading-Guarantee-District-Resources>.

<sup>34</sup> Section 13(B).

<sup>35</sup> R.C. 3313.608(B)(3), not in the bill.

4. The teacher was rated “above expected value added,” in reading instruction, as determined by criteria established by the Department, for the most recent, consecutive two years;
5. The teacher has earned a passing score on a rigorous test of principles of scientifically research-based reading instruction as approved by the State Board;
6. The teacher holds an educator license for teaching grades pre-kindergarten through three or four through nine issued on or after July 1, 2017.<sup>36</sup>

### **Background on the Third-Grade Reading Guarantee**

The Third-Grade Reading Guarantee is a program created to identify students in grades kindergarten through three who are reading below grade level. Schools must administer diagnostic assessments in reading for grades kindergarten through two to identify students who are reading below grade level and to provide intervention services for those students prior to taking the third grade English language arts assessment. If a third grader does not take this assessment or fails to attain the required score, unless otherwise exempted, the student may not be promoted to the fourth grade. A similar guarantee applies to students attending chartered nonpublic schools with state scholarships.<sup>37</sup>

### **Reading improvement plans**

The bill exempts public schools from two separate provisions requiring the establishment of reading improvement plans in the 2020-2021 school year based on assessment results for the 2019-2020 school year.<sup>38</sup>

Continuing law otherwise requires a school district, community school, or STEM school to establish a reading improvement plan, which must be approved by the district board of education, school governing authority, or school governing body, if less than 80% of its students attain a proficient score or higher on the third grade English language arts assessment.<sup>39</sup>

It also requires that a school district or a community school that failed to meet a specified level of achievement on reading-related measures, as reported on the past two consecutive report cards, must submit a “reading achievement improvement plan” to the Department. Specifically, any district or school that meets *both* of the following criteria must fulfill this requirement:

1. The district or school received a grade of “D” or “F” on the K-3 literacy progress measure; *and*

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<sup>36</sup> R.C. 3313.608(H), not in the bill.

<sup>37</sup> R.C. 3301.163 and 3313.608, neither in the bill.

<sup>38</sup> Section 13(C) and Section 14.

<sup>39</sup> R.C. 3301.0715(G), not in the bill.



2. Less than 60% of the district's or school's students that took the third grade English language arts assessment prescribed for that school year attained at least a proficient score on that assessment.

For each subsequent year, the district or school must annually submit an improvement plan until it no longer meets both criteria.<sup>40</sup>

## **Academic assessment records for home instructed students**

The bill exempts parents of students receiving home instruction from the administrative rule requirement to submit an academic assessment record for the 2019-2020 school year to the student's resident school district superintendent as a condition of allowing the student to continue receiving home instruction for the 2020-2021 school year.<sup>41</sup>

Current law, enacted in H.B. 197 of the 133<sup>rd</sup> General Assembly, exempts parents of students receiving home instruction, for the 2019-2020 school year, from submitting the results of a standardized achievement assessment administered for the student, which under the current administrative rule is only one alternative for the academic assessment record. It appears that district superintendents still could require parents to submit a written narrative indicating that a portfolio of samples of the student's work has been reviewed or an alternative assessment, which are the other alternatives for the academic assessment record prescribed in the current administrative rule.<sup>42</sup> The bill temporarily exempts home instructed students from the entire assessment record requirement.

## **Community school sponsor ratings**

H.B. 197 of the 133<sup>rd</sup> General Assembly prohibits the Department from (1) issuing a rating for the academic performance component for community school sponsors, (2) using that rating for the overall rating, and (3) finding a sponsor out of compliance with laws and rules for any requirement for an action that should have occurred while schools were closed due to the COVID-19 outbreak. The bill, on the other hand, prohibits the Department from issuing *any* community school sponsor ratings at all for the 2019-2020 school year. It also removes H.B. 197's prohibition on finding a sponsor or community school out of compliance with an applicable law or administrative rule for any requirement of an action that should have occurred while schools were closed. Instead, the Department must allow community school sponsors to indicate that they could not comply with an applicable law or administrative rule or fully adhere to a quality practice because the action could not be completed while schools were closed.

The bill further specifies that the absence of community school sponsor ratings for the 2019-2020 school year has no effect in determining sanctions or penalties of community school

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<sup>40</sup> R.C. 3302.13, not in the bill.

<sup>41</sup> Section 17(L) of H.B. 197 of the 133<sup>rd</sup> General Assembly, amended in Sections 5 and 6 of the bill.

<sup>42</sup> Ohio Administrative Code (O.A.C.) 3301-34-04.

sponsors and does not create a new starting point for determinations that are based on ratings over multiple years. The ratings of any previous or subsequent school years must be considered in determining whether a sponsor is subject to sanctions or penalties.

However, sponsors remain eligible for the 2020-2021 school year for any incentives that the sponsor was eligible for in the 2019-2020 school year. The bill specifically states that the 2019-2020 school year does not count toward the number of years in which a sponsor may not be evaluated if a sponsor previously received a rating of either “exemplary” or “effective” for at least three consecutive years.<sup>43</sup>

### **Background on sponsor evaluations**

The Department annually assigns an overall rating to the sponsors of community schools based on a combination of three equally rated components: (1) the academic performance of students enrolled in community schools under the sponsor’s oversight, (2) the sponsor’s adherence to quality practices, and (3) the sponsor’s compliance with laws and administrative rules. Each component receives an individual rating, and the overall rating is derived from those individual ratings. The ratings are “exemplary,” “effective,” “ineffective,” and “poor.”

Sponsors that receive an overall rating of “exemplary” for at least two consecutive years may take advantage of incentives that include (1) renewal of the written agreement with the Department for up to ten years, (2) the ability to extend the term of the contract between the sponsoring entity and the community school beyond the term described in the written agreement with the Department, (3) no limit on the number of community schools the entity may sponsor, and (4) no territorial restrictions on sponsorship. Sponsors that receive an overall rating of “exemplary” or “effective” for three consecutive years can only be evaluated by the Department once every three years.<sup>44</sup>

Continuing law also prohibits a sponsor with an overall rating of “ineffective” from sponsoring any new or additional community schools. These sponsors are also subject to a quality improvement plan based on correcting the deficiencies that led to the “ineffective” rating, with timelines and benchmarks that have been established by the Department. Further, the law generally requires the revocation of the sponsorship authority of (1) a sponsor with an overall rating of “poor” and (2) a sponsor with three consecutive overall ratings of “ineffective.”<sup>45</sup>

The academic performance component is primarily derived from the state report card performance measures and is based on the performance of the sponsor’s schools for the year for which the evaluation is conducted.<sup>46</sup> Community schools that have been in operation for not

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<sup>43</sup> Section 17(F) of H.B. 197 of the 133<sup>rd</sup> General Assembly, amended in Sections 5 and 6 of the bill. See R.C. 3314.016(B)(7)(b), not in the bill.

<sup>44</sup> R.C. 3314.016, not in the bill.

<sup>45</sup> R.C. 3314.016(B)(7)(c) and (d), not in the bill.

<sup>46</sup> R.C. 3314.016(B)(1)(a), not in the bill.

more than two full school years or those in which a majority of the enrolled students are children with disabilities receiving special education and related services are excluded from that calculation.<sup>47</sup>

## **Services to special needs students**

The bill permits licensed nonclassroom personnel providing professional services to students with disabilities through their resident school districts or under the Autism Scholarship or Jon Peterson Special Needs Scholarship programs to provide services electronically or via telehealth communication for the balance of the 2019-2020 school year and the entirety of the 2020-2021 school year.<sup>48</sup> This is an extension of the authority granted to these personnel in H.B. 197 of the 133<sup>rd</sup> General Assembly, which permits these services to be provided electronically or via telehealth communication for the duration of the Director of Health's order to close schools for the COVID-19 outbreak, or until December 1, 2020, if the order or extension of it has not been rescinded by then.

This authority applies to personnel licensed by the Speech and Hearing Professionals Board; the Occupational Therapy, Physical Therapy, and Athletic Trainers Board; the State Board of Psychology; and the Counselor, Social Worker, and Marriage and Family Therapist Board. It also applies to intervention specialists and school psychologists licensed by the State Board of Education.

## **Preschool special education teachers**

The bill permits a teacher who is licensed to teach special education and is employed to teach a public school preschool integrated class prior to the effective date of licensure requirement changes by the State Board of Education to continue to teach a public school preschool integrated class until the teacher retires, resigns, or is reassigned by the employing school, educational service center, or county board of developmental disabilities. Thereafter, the teacher must meet the licensure qualifications prescribed by administrative rule to teach a public school preschool integrated class.<sup>49</sup>

## **Remote learning**

The bill permits certain public schools (see below) that have not otherwise been approved to use a "blended" learning model under continuing law for the 2020-2021 school year to adopt a plan to provide instruction using a "remote" learning model for the 2020-2021 school year.

The plan must include all the following:

1. A description of how student instructional needs will be determined and documented;

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<sup>47</sup> R.C. 3314.016(B)(2), not in the bill.

<sup>48</sup> Section 16 of H.B. 197 of the 133<sup>rd</sup> General Assembly, amended in Sections 5 and 6 of the bill.

<sup>49</sup> R.C. 3323.10.

2. The method to be used for determining competency, granting credit, and promoting students to a higher grade level;
3. The school's attendance requirements, including how the school will document participation in learning opportunities;
4. A statement describing how student progress will be monitored;
5. A description as to how equitable access to quality instruction will be ensured; and
6. A description of the professional development activities that will be offered to teachers.

The bill's provision specifically applies to a school district, community school that is not an internet- or computer-based community school (e-school), or a STEM school that has not been approved to use a blended learning model under continuing law for the 2020-2021 school year on the bills effective date. A school's plan must be submitted to the Department of Education by July 31, 2020, but the bill also specifies that the plan is not subject to the approval of the Department. Further, the bill specifies that a district or school that implements such a plan must be considered to have complied with any requirements otherwise prescribed under continuing law regarding a minimum number of school hours and state funding. Finally, it specifies that a student who receives instruction under the plan must not be counted as more than "1.0" full-time equivalent student for state funding purposes.<sup>50</sup>

Under continuing law, a "blended learning" means "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."<sup>51</sup>

### **Teacher subject area or grade band assignment flexibility**

The bill permits a school district superintendent to employ or reassign a licensed teacher to teach a subject area or grade level for which the teacher is not licensed for the 2020-2021 school year, as long as the teacher's licensure grade band is within two grade levels of the grade to be taught, and the teacher has three or more years teaching experience.<sup>52</sup>

Generally, a teacher employed by a school district must be properly licensed by the State Board of Education for the grade band or subject area taught.<sup>53</sup>

### **Community school governing authority membership**

The bill permits a person to serve on the governing authority of more than five start-up community schools, as long as:

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<sup>50</sup> Section 16.

<sup>51</sup> R.C. 3301.079 and 3302.41, neither in the bill.

<sup>52</sup> Section 17.

<sup>53</sup> R.C. 3319.074, 3319.30, and 3319.36, none in the bill. See also Ohio Administrative Code 3301-35-05.

1. The person serves in a volunteer capacity on every governing authority and receives no compensation related to that service from any governing authority; and
2. For any school that has an operator, that operator is a nonprofit organization.

Current law prohibits a person from simultaneously serving on the governing authority of more than five start-up community schools.<sup>54</sup>

## Storm shelters

The bill extends from September 15, 2020, to November 30, 2022, the existing moratorium on the building code requirement for storm shelters in school buildings operated by a public or private school or in any such school building undergoing or about to undergo construction, alteration, repair, or maintenance financed prior to the end of the moratorium.<sup>55</sup>

## Online school bus driver training

The bill requires the Department to develop an online training program to satisfy the classroom portion of preservice and annual in-service training for school bus driver certification for the 2020-2021 school year. It also specifies, however, that the on-the-bus training for drivers must continue to be completed in person.<sup>56</sup>

Statutory law regarding school bus driver qualifications requires, among other things, that before a driver may operate a bus for student transportation, the employing district, school, or contractor must submit to the Department the driver's license number, date of birth, date of hire, status of physical evaluation, and status of training. The Administrative Code, on the other hand, contains details about that training and prescribes both classroom and on-the-bus training for preservice and in-services drivers.<sup>57</sup>

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## HISTORY

Action	Date
Introduced	03-25-19
Reported, H. Primary & Secondary Education	06-27-19
Passed House (61-31)	11-13-19
Reported, S. Education	_____

H0164-RS-133/ts

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<sup>54</sup> R.C. 3314.02(E).

<sup>55</sup> R.C. 3781.1010.

<sup>56</sup> Section 15.

<sup>57</sup> R.C. 3327.10(G), not in the bill, and O.A.C. 3301-83-10.