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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 409  
133<sup>rd</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for H.B. 409's Bill Analysis](#)

**Version:** As Reported by Senate Education

**Primary Sponsor:** Rep. Koehler

**Local Impact Statement Procedure Required:** No

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### Highlights

- Under the bill's safe harbor provision on report card ratings, some school districts and schools would not bear the expense of potentially costly sanctions or penalties to which they may otherwise have been subject. Although, other districts and schools under sanction would not have the opportunity for relief from such sanctions.
- Administrative costs to general education internet- or computer-based community schools (e-schools) as well as school districts and STEM schools that operate schools providing primarily remote instruction may increase to comply with new attendance calculation requirements. Costs for absence intervention services may change depending on how the bill's attendance calculation method alters the number of students triggering the provision of those services.

### Detailed Analysis

In general, the bill extends various provisions of law enacted in response to the COVID-19 pandemic and ordered school closure during the 2019-2020 school year to cover the 2020-2021 school year. These provisions involve safe harbor on report cards and other accountability measures, community school sponsors, and the third-grade reading guarantee. The bill also concerns substitute teacher qualifications for the remainder of the 2020-2021 school year and student attendance for remote learners. The bill declares an emergency with respect to its safe harbor and substitute teacher provisions, so those will go into immediate effect.

## **Safe harbor provisions**

### **Report cards**

The bill prohibits the Ohio Department of Education (ODE) from publishing state report card ratings and assigning overall or component letter grades on the state report cards for the 2020-2021 school year and prohibits any report card ratings for this school year from being considered in determining whether a district or school is subject to sanctions or penalties. Although, while the bill prohibits the publishing of ratings and assignment of overall and component letter grades, it specifies that ODE is still required to report any performance data that it has for schools and districts by September 15 2021, as under current law.

Effectively, until the release of 2021-2022 school year report cards, those for the 2018-2019 school year will be the most recent used for provisions and programs dependent on report card grades. Thus, the bill prevents some schools and districts from beginning to be subject to potentially costly state sanctions for low performance, including the creation of academic distress commissions (ADCs), state interventions for school improvement purposes, locations of start-up community schools, community school closure provisions, community school restrictions with respect to sponsor changes, and other school restructuring requirements. On the other hand, districts and schools that were on track to improve their report card grades may be subject to such sanctions longer than they otherwise would have.

### **Third-grade reading guarantee**

In addition to safe harbor from report card-related sanctions, the bill prohibits schools from retaining a student in the third grade under the third-grade reading guarantee based on reading performance in the 2020-2021 school year unless the principal of the student's school and the student's reading teacher agree that the student is reading below grade level and not prepared to be promoted to fourth grade.

### **Community school sponsors**

The bill creates a safe harbor period from community school sponsor penalties and sanctions based on ratings for the 2020-2021 school year. Instead, ratings from previous and subsequent years will be considered. This may prevent some sponsors, which include school districts, educational service centers (ESCs), and other nonprofit organizations, who would otherwise have received ratings of "ineffective" or "poor" for the 2020-2021 school year from having sponsorship authority revoked. Sponsorship authority is revoked, subject to an available appeals process, for sponsors that receive a poor rating or three consecutive ineffective ratings. Since no schools will lose sponsorship authority due to ratings for the 2020-2021 school year, the administrative costs of ODE's Office of School Sponsorship may decrease. The Office of School Sponsorship is authorized to take over sponsorship for a school having a sponsor rated as "poor" or "ineffective" for three consecutive years until the school finds a new sponsor. The Office's operations are financed by a sponsorship fee of up to 3% of each sponsored school's operating revenue.

On the other hand, some sponsors may not be able to newly take advantage of certain incentives for "effective" or "exemplary" ratings. For example, entities with an overall rating of "exemplary" or "effective" for at least three consecutive years are evaluated by ODE once every three years, instead of annually. Entities with an overall rating of "exemplary" for at least two consecutive years may sponsor an unlimited number of schools with no territorial restrictions

and also receive exemptions from certain requirements on contracts with ODE and the sponsored schools.

## **Substitute teacher qualifications**

The bill allows school districts, community schools, STEM schools, and chartered nonpublic schools, for the remainder of the 2020-2021 school year, to hire individuals as substitute teachers according to the district's own educational requirements. Presumably, this permits a district to employ an individual who does not have a particular postsecondary degree or any degree at all as a substitute teacher. The bill does not state whether a substitute teacher employed under the bill must be licensed by the State Board of Education. Generally, educator licenses, permits, or certificates issued by the State Board of Education for teaching grades K-12, including serving as a substitute teacher, require at least a bachelor's degree. Individuals still must satisfy other requirements set in law, administrative code, and the policies of the district or school. The bill will generally have no effect on school district expenditures as it simply gives districts more flexibility in hiring substitute teachers for the rest of the school year.

## **Attendance taking and absence intervention for remote learners**

### **Current practice under remote learning plans**

H.B. 164 of the 133<sup>rd</sup> General Assembly permitted traditional public schools, site-based community schools, and STEM schools that had 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 that year. Those plans were required to include, among other items, the school's attendance requirements, including how the school will document participation in learning opportunities. According to ODE guidance, public schools operating under remote learning plans currently have some flexibility with respect to tracking attendance. "While attendance must be reported [to the Education Management Information System (EMIS)] in hourly increments [for each student], districts and community schools may consider monitoring attendance on a regular schedule (for example, weekly) that provides flexibility for families as they support their children's completion of remote learning activities" (note that ODE reports it is not necessary to take attendance hourly). Further, ODE indicated that "the typical default for local student information systems is to assume that students are in attendance. A district or school enters absences into the information system based on their occurrence . . . If there is no evidence the student participated or engaged in any way in a remote learning activity, then the student should be marked with an absence for the hours for that remote learning activity."<sup>1</sup>

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<sup>1</sup> Ohio Department of Education, "Attendance Considerations for Remote Learning Plans." <http://education.ohio.gov/Topics/Reset-and-Restart/Blended-and-Remote-Learning-Comparison/Attendance-Considerations-for-Remote-Learning-Plan>.

## The bill

The bill requires internet- or computer-based community schools that are not dropout prevention and recovery schools<sup>2</sup> (“general education e-schools”) and schools that are operated by a school district or STEM school and provide instruction primarily through remote learning to adopt certain attendance calculation measurements when students primarily receive remote instruction. If a student participates in at least 90% of the hours of instructional activities provided by the school or if the student is on pace for on-time completion for any enrolled course, as defined by the school’s attendance policy, the student is considered in attendance. If the student does not meet one of the two conditions, they are considered absent for the purposes of determining when the student must undergo the school’s absence intervention procedures. If a student enrolled at a general education e-school has 30 or more hours of unexcused absences in a semester, the school must provide written notice to the student’s parent, guardian, or custodian. The bill does not alter current law regarding automatic disenrollment from general education e-schools.

Administrative costs for general education e-schools, school districts, and STEM schools may increase to adopt and implement the new attendance policies. Costs for absence intervention services may change depending on how the bill’s attendance calculation method alters the number of students triggering the provision of those services.

Under continuing law, absence intervention strategies may include a truancy intervention plan for excessively absent students, counseling for habitually truant students, parental involvement programs, truancy prevention mediation programs, and, ultimately, filing truancy complaints in juvenile court. School districts whose chronic absenteeism percentage is 5% or more, as reported on the district’s most recent report card, must assign students to an absence intervention team within ten days after a student surpasses the threshold for a habitual truant. The team must develop an intervention plan for the student, with the aim of reducing or eliminating further absences.

### **Number of general education e-schools and school districts providing fully remote instruction**

Currently, six general education e-schools operate in the state. In FY 2020, these schools collectively educated about 19,400 full-time equivalent (FTE) students and received about \$142 million in state foundation aid.<sup>3</sup> In FY 2021, general education e-school enrollment and funding is slated to increase to about 30,900 students and about \$211 million, respectively (as of November 2020), as more parents have opted to enroll their children in e-schools for the 2020-2021 school year in the wake of the COVID-19 pandemic.

According to data gathered by educational service centers and reported to the Ohio Department of Education, for the week of December 10, 2020, 190 school districts were providing fully remote instruction. These districts are comprised of 1,353 individual buildings. It

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<sup>2</sup> A dropout prevention and recovery school is a school in which a majority of the students are enrolled in a dropout prevention and recovery program.

<sup>3</sup> One of the six current schools had not yet opened. It began operations in FY 2021.

is likely that the number of districts and corresponding number of school buildings operating primarily online will fluctuate throughout a school year.