



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **S.B. 289**

132nd General Assembly  
(As Introduced)

Sen. Kunze

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## **BILL SUMMARY**

### **Expulsion of students for communicating threats**

- Permits a school district, community school, or STEM school to establish a policy that authorizes the district superintendent, or equivalent, to expel a student for not more than 60 days for communicating a threat to kill or do physical harm to persons or property under prescribed conditions.
- Authorizes a district board, community school governing authority, or STEM school governing body to require a student to "undergo an assessment" to determine whether the student poses a danger to the student's self or to other students or school employees.
- Authorizes the superintendent to either (1) reinstate the student if the student shows sufficient rehabilitation or (2) extend the expulsion for not more than one calendar year if the student fails to undergo a required assessment.
- Requires the district or school to develop a plan for the continued education of the student during the expulsion period.
- Permits a district or school to provide educational services in an alternative setting instead of returning the expelled student to the school in which the student was enrolled, if the student threatened a specific teacher or student.
- Permits the district superintendent, in consultation with legal counsel, to redact from the student's school record any documentation related to an expulsion under the bill.

## **Civil action for restitution**

- Permits a school district board or law enforcement agency to file a civil action to seek restitution from the parent of a minor student who is expelled under the bill's expulsion provisions for costs incurred in connection with the student's conduct.

## **Involuntary temporary hospitalization**

- Permits a district superintendent and a school psychologist to have an individual involuntarily hospitalized for mental health treatment in an emergency.

## **School safety risk assessment**

- Authorizes a school safety risk assessment for a student who communicates a threat to kill or harm persons, whereby the student may be taken into custody and hospitalized for examination.
- If the student is determined to be mentally ill subject to a court order, specifies that the student may not be expelled but may be refused admission to school as long as educated in an alternative setting.
- Requires the decision not to readmit the student be reviewed by a specified panel of individuals.
- Permits a student or a student's parent, guardian, or custodian to appeal the decision of a review panel to the district board of education.
- Exempts any documentation used by a review panel in determining whether a student may return to school from the Public Records Law.
- Creates qualified civil immunity for members of a review panel, district superintendents, and school district boards.
- Permits the district superintendent, in consultation with legal counsel, to redact from the student's school record any documentation related to school safety risk assessment.

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## **CONTENT AND OPERATION**

### **Expulsion of students for communicating threats**

The bill authorizes the board of education of a school district, the governing authority of a community school, or the governing body of a STEM school to establish a policy that authorizes the district superintendent, or equivalent of the community or



STEM school, to expel a student for not more than 60 days for communicating a threat to kill or do physical harm to persons or property if specified conditions are met. Those conditions are:

(1) The threat is communicated verbally or in writing in person or via electronic communication device;

(2) The threat is made against persons or property at school or other school property, on a school bus, or at any school event;

(3) The student who made the threat engaged in conduct that constitutes a "substantial step" in a course intended to culminate in the commission of the threatened act, as determined by the superintendent in consultation with the appropriate local law enforcement agency; and

(4) The student who made the threat is *not* determined to be a mentally ill person subject to court order (see "**Involuntary temporary hospitalization**," below).<sup>1</sup>

The bill also specifies that its new expulsion provisions apply regardless of whether the person or property that is the object of the threat actually receives the threat.<sup>2</sup>

### **Reinstatement of expelled students**

Under the bill, when a student is expelled for making a threat, the district or school may require that student to undergo an assessment to determine whether the student poses a danger to the student's self or to other students or school employees. Additionally, it provides for the reinstatement of the student at the end of the expulsion period, if the student shows sufficient rehabilitation. However, the bill also authorizes the superintendent to extend the expulsion for not more than one calendar year if the student fails to undergo a required assessment. If a student's expulsion is extended, the superintendent is similarly authorized to reinstate the student at the end of the extended expulsion period if that student shows sufficient rehabilitation. However, the superintendent must consult with mental health professionals and representatives from the district or school and a law enforcement agency before making that determination.<sup>3</sup>

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<sup>1</sup> R.C. 3313.66(B)(6)(a) to (d).

<sup>2</sup> R.C. 3313.66(B)(6)(d), second paragraph.

<sup>3</sup> R.C. 3313.66(B)(6)(d), third paragraph.

## **Continued education of expelled students**

The bill requires the district or school to develop a plan for the continued education of the expelled student during the expulsion period. The bill states that this plan may include education provided in an alternative setting.<sup>4</sup>

## **Alternative setting for educational services for a readmitted student**

If an expelled student communicated a threat against a specific teacher or student, at the end of the expulsion, instead of returning that student to the school in which the student was enrolled prior to the expulsion, the bill permits the superintendent to provide educational services in an alternative setting.<sup>5</sup>

## **Redaction on a student's school record**

The bill also permits the superintendent, in consultation with the district's legal counsel, to redact from the student's school record any documentation related to an expulsion under the bill.<sup>6</sup>

## **Due process**

The bill specifies that its new expulsion provisions are subject to the same due process procedures as for any other type of expulsion under current law.<sup>7</sup> Those procedures are described below.

## **Required notifications**

Prior to expelling a student, current law requires the superintendent to (1) give the student and the student's parent written notice of the intention to expel the student and the reasons for the expulsion and (2) provide the student and the student's parent an opportunity to appear before the superintendent to challenge the expulsion. The required notice must include specified information, such as the reasons for the intended expulsion, notification of the opportunity to appear before the superintendent to challenge these reasons, and notification of the time and place to appear, which must be between three and five days after the notice is given, unless the superintendent grants an extension.<sup>8</sup>

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<sup>4</sup> R.C. 3313.66(B)(6)(d), fourth paragraph.

<sup>5</sup> R.C. 3313.66(B)(6)(d), eighth paragraph.

<sup>6</sup> R.C. 3313.66(B)(6)(d), ninth paragraph.

<sup>7</sup> R.C. 3313.66(B)(6)(d), fifth paragraph.

<sup>8</sup> R.C. 3313.66(B)(7).



Additionally, within one school day after a student begins serving an expulsion, the superintendent must provide written notification of the expulsion to the student's parent and the district or school treasurer or fiscal officer. The notice must (1) explain the reasons for the expulsion, (2) inform the parent of the right of the parent or student to appeal the expulsion to the district or school board, and (3) state that the expulsion may be subject to extension and the superintendent may seek the student's permanent exclusion, if applicable. When a student is expelled for more than 20 school days or for a period covering more than one semester or school year, the superintendent must provide information about public and private agencies that offer programs to improve the behavioral problems that contributed to the student's expulsion.<sup>9</sup>

### **Appeals**

The student or the student's parent may appeal an expulsion to the district or school board, which must conduct a hearing before the board, or its designee, regarding the expulsion. At the request of the student or the student's parent or attorney, the board may hold the hearing in executive session, but the board still must make its finding only at a public meeting. The board, by a majority vote of its full membership or by the action of its designee, may (1) affirm the order of expulsion, (2) reinstate the student, or (3) otherwise reverse, vacate, or modify the order of expulsion. The board's decision is appealable to the court of common pleas where the district or school is located.<sup>10</sup>

### **Civil action for restitution**

The bill permits a school district board or law enforcement agency to file a civil action to seek restitution from the parent of a minor student who is expelled under the bill's new expulsion provisions for the reasonable and actual administrative and investigative costs incurred in connection with the student's conduct.<sup>11</sup> This provision does not apply to community schools or STEM schools.

### **Miscellaneous expulsion provisions**

The bill makes the following miscellaneous changes regarding expulsions:

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<sup>9</sup> R.C. 3313.66(D).

<sup>10</sup> R.C. 3313.66(E).

<sup>11</sup> R.C. 3313.669.



(1) Specifies that an expulsion under the bill's new provisions extends, as necessary, into the next school year (similar to current law regarding other types of expulsions);<sup>12</sup>

(2) Specifies that the bill does not affect a district's obligation to provide a free and appropriate education to children with disabilities, or limit or prohibit bringing a juvenile or criminal action against a student who is expelled under the bill's new expulsion provisions;<sup>13</sup> and

(3) For all types of expulsions (not just the bill's new expulsion provisions), specifies that the deadline for the notice parents and students must give to the district or school of their intent to appeal an expulsion, must be not less than 14 "calendar" days, rather than 14 days as under current law.<sup>14</sup>

### **Involuntary temporary hospitalization**

The bill amends current law to add district superintendents and school psychologists to list of those who may have an individual involuntarily hospitalized for mental health treatment in an emergency. To do so, the superintendent or school psychologist, just as the other officials listed in current law, must have reason to believe that the individual is a mentally ill person subject to a court order and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination.<sup>15</sup> The bill's changes do not apply to community school or STEM school superintendent or equivalent; however, they might apply to a school psychologist employed by a community school or STEM school.

Current law establishes a process by which involuntary hospitalization of an individual who is mentally ill may be initiated in an emergency when there is insufficient time to seek hospitalization through the judicial process that otherwise would apply.<sup>16</sup> This process currently applies to a psychiatrist, licensed clinical psychologist, physician, health officer, parole officer, police officer, sheriff, chief of the adult parole authority, or a parole or probation officer with the chief's authority may initiate this process. An individual may be taken into custody for up to three days for examination. After 24 hours, if the individual is determined to be mentally ill, the chief

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<sup>12</sup> R.C. 3313.66(B)(6)(d), eighth paragraph.

<sup>13</sup> R.C. 3313.66(B)(6)(d), sixth and seventh paragraphs.

<sup>14</sup> R.C. 3313.661.

<sup>15</sup> R.C. 5122.10.

<sup>16</sup> Judicial hospitalization is governed by R.C. 5122.11, not in the bill.

clinical officer may admit the individual as a voluntary patient or seek judicial hospitalization.<sup>17</sup>

### **School safety risk assessment**

Under the bill, a student enrolled in a school district who communicates a threat to kill or do physical harm to persons or property may be subject to a school safety risk assessment. If the student is believed to be a mentally ill person subject to court order, that student may be taken into custody and transported to a hospital (as described above).<sup>18</sup> If, upon examination, the chief clinical officer of the hospital determines that the student is *not* a mentally ill person subject to court order, the district superintendent may expel the student under the bill.<sup>19</sup> However, if the chief clinical officer determines that a student is a mentally ill person subject to court order, the superintendent may not expel that student, but also may choose not to readmit that student. If the superintendent chooses not to readmit the student, the superintendent must provide educational services to the child in alternative setting.<sup>20</sup>

The bill's safety risk assessment provisions do not appear to apply to community schools or STEM schools.

### **Review panel**

If the district superintendent chooses not to readmit a student, a review panel must determine if the student is able to return to school within 30 days of the student's removal. The panel must include mental health professionals and representatives from the district and a law enforcement agency. If the panel determines that the student should not return to school, the superintendent must continue to provide educational services to that student. The bill requires the panel to re-review the student's ability to return to school every 30 days until the student is readmitted.<sup>21</sup>

If the panel determines that the student should not return to school, the student or the student's parent, guardian, or custodian may appeal that determination to the district board by notifying the superintendent of the intent to appeal by telephone within 48 hours of the panel's determination. The district board must hear that appeal at

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<sup>17</sup> R.C. 5122.10.

<sup>18</sup> R.C. 3313.6610(A).

<sup>19</sup> R.C. 3313.6610(A)(1).

<sup>20</sup> R.C. 3313.6610(A)(2).

<sup>21</sup> R.C. 3313.6610(A)(3).

its next scheduled regular meeting. The hearing of the appeal must be in an executive session of the board. Under the bill, the board's decision is final.<sup>22</sup>

The bill specifies that school safety risk assessment provisions do not diminish the rights of eligible students or the obligations of school districts under the federal Individuals with Disabilities Education Act.<sup>23</sup>

### **Public Records Law exemption**

The bill exempts any documentation used by a review panel to make a determination to return a student to school from the Public Records Law.<sup>24</sup>

### **Qualified immunity**

The bill specifies that a member of a review panel, the district superintendent, the district board, and any member of the district board is not liable for damages in a civil action for injury, death, or loss to person or property allegedly arising from the performing of the member's duties, unless the act or omission constitutes willful or wanton misconduct.<sup>25</sup>

### **Redaction on a student's school record**

The bill also permits the district superintendent, in consultation with the district's legal counsel, to redact from the student's school record any documentation related to the school safety risk assessment.<sup>26</sup>

### **Background on expulsion and suspension policies**

Current law provides some mechanisms for removing students from a public school for disciplinary reasons, including suspension, expulsion, reassignment, emergency removal, and permanent exclusion. Under current law, each school district, community school, and STEM school must adopt a code of conduct for the district or school and policies for the enforcement of that code.<sup>27</sup> A student that is subject to suspension, expulsion, or permanent exclusion is entitled to specific due process

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<sup>22</sup> R.C. 3313.6610(A)(3).

<sup>23</sup> R.C. 3313.6610(E).

<sup>24</sup> R.C. 149.43, not in the bill.

<sup>25</sup> R.C. 3313.6610(C).

<sup>26</sup> R.C. 3313.6610(D).

<sup>27</sup> R.C. 3313.661(A).



procedures *prior* to imposition of the discipline, as well as an appeals process. However, in the case of emergency removal, which is temporary in nature, the student is entitled to due process following the imposition of the disciplinary action.

### **Suspension and expulsion**

The district superintendent or school principal may "suspend" a student for up to ten school days for minor violations of the district's or school's code of conduct.<sup>28</sup> The superintendent (and not a principal) may also "expel" a student for up to the greater of 80 school days or the remainder of the school term for more serious violations of that code.<sup>29</sup> In addition, the superintendent must expel a student for one full year for *carrying* a firearm to school and, depending upon board policy, may expel a student for one full year for possessing a firearm or knife at school or a school-sponsored activity, for causing serious physical harm to persons or property at school or a school-sponsored activity, or making a bomb threat to a school or school-sponsored activity.<sup>30</sup>

The law also provides for due process procedures that must be followed in the case of these disciplinary actions. In general, suspensions and expulsions require prior notice to the student and the student's parent and an opportunity for the student to explain the student's actions. Suspensions and expulsions may be appealed to the district board of education, and, if applicable, the court of common pleas.<sup>31</sup>

### **Emergency removal**

If a student's presence poses a continuing danger to persons or property or an ongoing threat to the academic process, the superintendent or principal may temporarily remove a student from curricular activities or the school premises without first providing the student with notice and an opportunity for a hearing. However, the student must be notified in writing of the reasons for the removal and receive a hearing within three school days after the removal. This hearing must be conducted in the same manner as a suspension hearing, except that if the student will likely be expelled, the hearing must comply with the expulsion procedures.<sup>32</sup>

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<sup>28</sup> R.C. 3313.66(A).

<sup>29</sup> R.C. 3313.66(B)(1).

<sup>30</sup> R.C. 3313.66(B)(2) to (5).

<sup>31</sup> R.C. 3313.66(B)(7), (D), and (E).

<sup>32</sup> R.C. 3313.66(C).

## Permanent exclusion

The Superintendent of Public Instruction may issue an order that permanently excludes a student from attending any public school in Ohio if the student is convicted of or adjudicated a delinquent child for committing, when the student was 16 or older, certain violations. Those violations are any of the following: (1) conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone, (2) carrying a concealed weapon, drug trafficking, or drug possession (other than a minor drug possession offense) that was committed on school district property or at a district-sponsored activity, (3) aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, rape, gross sexual imposition, or felonious sexual penetration that was committed on school district property or at a district-sponsored activity, if the victim was a district employee, or (4) complicity in any act described in (1) to (3), regardless of where the act of complicity occurred.

A student's permanent exclusion lasts until the state Superintendent issues an adjudication order revoking it.

The decision of the state Superintendent to permanently exclude a student is subject to appeal to the appropriate court of common pleas.<sup>33</sup>

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## HISTORY

ACTION	DATE
Introduced	04-09-18

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<sup>33</sup> R.C. 3301.121 and 3313.662, neither in the bill.

