



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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Sub. H.B. 491

132nd General Assembly
(As Passed by the General Assembly)

Reps. Edwards, Butler, Householder, Hambley, Anielski, Antonio, Boyd, Brenner, Brown, Craig, Cupp, Dever, Fedor, Hughes, Lang, Lepore-Hagan, Miller, O'Brien, Patterson, Patton, Perales, Reineke, Roegner, Romanchuk, Ryan, Schuring, Seitz, Sheehy, Stein, Thompson, Wiggam, R. Smith

Sens. Bacon, Beagle, Coley, Dolan, Eklund, Gardner, Hackett, Hoagland, Hottinger, Kunze, Lehner, Manning, McColley, Oelslager, Peterson, Schiavoni, Skindell, Sykes, Tavares, Terhar, Thomas, Uecker, Wilson, Yuko

Effective date: March 20, 2019

ACT SUMMARY

Substitute licenses for pupil services personnel

- Requires the State Board of Education to issue substitute licenses to certain pupil services personnel who hold valid Ohio occupational licenses and complete criminal records checks, without requiring any additional qualifications.

Counselor education

- Allows the Counselor, Social Worker, and Marriage and Family Therapist Board to temporarily approve a counseling education program created after January 1, 2018, that has not been accredited by the Council for Accreditation of Counseling and Related Educational Programs.
- Specifies that a degree from a Board-approved counseling education program is sufficient to receive a professional clinical counselor's license or a professional counselor's license for the time period approved by the Board.
- Requires the Board, if it elects to approve unaccredited programs, to adopt rules regarding the approval process, educational requirements, and time period during which completion satisfies licensure requirements.

School treasurer liability

- Protects from liability for loss of public funds a school district or educational service center treasurer who has performed the treasurer's official duties without negligence or wrongfulness.
- Requires a district or service center superintendent to provide a written statement to the school treasurer confirming the superintendent's receipt of the required reports and a valid educator license from each teacher prior to the teacher's receiving payment for services.
- Protects a school treasurer or superintendent from liability for loss of public funds for payments made to a teacher unless the loss results from the negligence or wrongfulness by that treasurer or superintendent.

School resource officer training

- Removes the requirement that the Ohio Peace Officer Training Commission must develop and conduct a *basic* school resource officer training course.
- Permits any one of three entities to conduct the *specialized* school resource officer training required under continuing law, provided that the program the entity intends to teach has been approved by the Commission.

Alternative high school graduation requirements

- Extends the 2018 alternative graduation pathways for two additional years, to the classes of 2019 and 2020.
- Modifies the requirements of the main alternative pathway for the class of 2020.

Recommendations for new permanent graduation requirements

- Requires the Department of Education to make recommendations for new permanent graduation requirements and to present them to the House and Senate Education committees by April 1, 2019.

Policy on assignments missed during suspension

- Requires school districts and schools to adopt a policy on completing and grading assignments missed as a result of a student's suspension that provides the student an opportunity to receive at least partial credit.



CONTENT AND OPERATION

Substitute licenses for pupil services personnel

The act requires the State Board of Education to issue substitute pupil services licenses to certain professionals who hold valid Ohio occupational licenses and complete criminal records checks, without requiring any additional qualifications. The act applies to:

- (1) Speech-language pathologists;
- (2) Audiologists;
- (3) Registered nurses who hold bachelor's degrees in nursing;
- (4) Physical therapists or physical therapist assistants;
- (5) Occupational therapists or occupational therapist assistants; and
- (6) Social workers.¹

Additionally, the act states that a substitute license "may" be issued upon the request and recommendation of the employing district or school. Presumably, the request and recommendation is a prerequisite to the State Board's issuance of the substitute license.

A person licensed under the act's provisions who wishes to work in a nonsubstitute capacity must satisfy the State Board's requirements for regular licensure.

Counselor education

The act allows the Counselor, Social Worker, and Marriage and Family Therapist Board to temporarily approve a counseling education program created after January 1, 2018, that has *not* been accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP). A degree from a temporarily approved program satisfies the degree and counselor training requirements for a clinical counselor's license or a professional counselor's license (a "counselor's license") during the time period specified by the Board.²

Under the act, the Board may adopt rules to approve a non-CACREP accredited counselor training program, but it is not required to do so. If the Board adopts rules to approve a non-CACREP program, the Board must do all of the following in the rules:

¹ R.C. 3319.2210.

² R.C. 4757.22 and 4757.23.



- (1) Create an application process;
- (2) Identify the educational requirements that an individual must satisfy to receive a graduate degree in counseling from the program;
- (3) Establish a time period during which an individual may use an unaccredited degree to satisfy the requirements for a counselor's license; and
- (4) Specify that a student enrolled in an unaccredited program approved by the Board is considered to have satisfied the requirements for a counselor's license

Under continuing law, a person seeking a counselor's license must hold a graduate degree in counseling, complete specific counselor training, and satisfy other requirements. If the Board opts not to adopt the rules permitted by the act, (1) a counseling graduate degree from an Ohio mental health counseling program created after January 1, 2018, must continue to be from a clinical mental health counseling program, a clinical rehabilitation counseling program, or an addiction counseling program accredited by CACREP and (2) all counselor training programs must continue to be CACREP-accredited or approved by the Board.

School treasurer liability

The act protects from strict liability for loss of public funds the treasurer of a school district or educational service center (ESC) who has performed all official duties with reasonable care. As such, a treasurer will not be held liable unless the funds were lost as a result of the treasurer's own negligence or other wrongful act. This departure from the usual rule of strict liability applies to the performance of duties generally, and to a treasurer's reliance on the accuracy of nonfinancial information or data found in the state Education Management Information System (EMIS), student transportation reports, and licensure or other credentialing information. The act further specifies that if the treasurer performs the official duties without negligence or wrongfulness, the Department of Education may not consider any related loss of public funds as a violation of the treasurer's professional duties.³

Payment for teacher services

Procedure

The act makes the treasurer's payment of a teacher for services contingent on a written statement from the district or ESC superintendent (or designee) specifying that the teacher has filed all required reports and a valid educator license to teach the subjects or grades to which the teacher is assigned. Under former law, the teacher (and not the superintendent) was required to file a written statement from the

³ R.C. 3313.25 and 3313.31.



superintendent asserting that the teacher had filed with the treasurer (and not the superintendent) a valid educator license.

The act also clarifies that each teacher is responsible for filing the required reports and license prior to receiving payment for services.⁴

Liability for loss

A treasurer who pays a teacher in compliance with this new procedure cannot be held liable for a loss of public funds for that payment, unless the loss results from the treasurer's own negligence or other wrongful act. This protection also extends to the district or ESC superintendent or designee, provided the loss was not a result of the superintendent's or designee's own negligence or wrongful act.⁵

The act does not address the ability to recover from a treasurer's (or superintendent's) bond when the treasurer (or superintendent) has acted without negligence or wrongfulness.

Effect on pending proceedings

The act's provisions specifically apply to any proceeding, investigation, or citation involving a school treasurer that is not finally resolved as of the act's effective date. This includes all available appeals.⁶

Background

A general provision of the Revised Code states that "[a]ll public officials are liable for all public money received or collected by them or by their subordinates under color of office."⁷ The Ohio Supreme Court has held public officials strictly and individually liable for the loss or misuse of public money under their control, regardless of blame.⁸ Like most public officials in Ohio, school treasurers must obtain a bond conditioned on faithful performance of all official duties. When the Auditor of State finds that public money has been lost or misspent, the state may file an action for recovery of that money.⁹ The law specifies that in addition to the liability of any public

⁴ R.C. 3319.36.

⁵ R.C. 3319.36(D) and (E).

⁶ Section 6 of the act.

⁷ R.C. 9.39, not in the act.

⁸ See for example, *Cordray v. International Preparatory School*, 128 Ohio St.3d 50 (2010) and *Seward v. National Surety Co.*, 120 Ohio St.47 (1929).

⁹ R.C. 117.28, not in the act.



official who can be sued, the bonding entity is liable and may be sued in the same action.¹⁰

School resource officer training

The act streamlines the process of providing school resource officer training (1) by removing the requirement that the Ohio Peace Officer Training Commission develop and conduct a *basic* school resource officer training course and (2) by permitting any one of three statutorily prescribed entities to conduct the 40 hours of *specialized* training that newly appointed school resource officers must complete. Under law amended in part by the act, the *specialized* training was to be conducted by only one of three possible entities, as determined by the Commission: (1) The National Association of School Resource Officers, (2) The Ohio School Resource Officers Association, or (3) A peace officer certified by the Ohio Peace Officer Training Commission to conduct a course of instruction that is approved by the Commission. While the act retains the ability of first two entities to conduct the *specialized training*, it replaces the certified peace officer with the Ohio Peace Officer Training Academy generally.

Also, instead of adopting rules for the approval of the entity to conduct the training as required under former law, the Commission must adopt rules for approving the training program itself.¹¹

In practice, these changes permit a newly appointed school resource officer to select the entity from which to receive the *specialized* training, provided the entity's program has been approved by the Ohio Peace Officer Training Commission.

Alternative graduation requirements

The act extends to the classes of 2019 and 2020 the two alternative high school graduation pathways originally established for the class of 2018. Additionally, it modifies the main alternative pathway for the class of 2020.¹²

Main alternative pathway – class of 2019

The first pathway qualifies a student in the class of 2019 for graduation if the student (1) takes the required end-of-course exams, or an alternate assessment for chartered nonpublic school students, (2) retakes, at least once, any English language arts or math end-of-course exam for which a student received an equivalent score of lower than "3", (3) completes the district's or school's required units of instruction, and (4) meets at least *two* of the following other conditions:

¹⁰ R.C. 117.32, not in the act.

¹¹ R.C. 3313.951.

¹² Section 733.67 of H.B. 49 of the 132nd General Assembly, amended in Sections 3 and 4 of the act.



- (a) Has an attendance rate of at least 93% during the twelfth grade;
- (b) Takes at least four full-year or equivalent courses during the twelfth grade and has a grade point average of at least 2.5 for those courses;
- (c) Completes a capstone project during the twelfth grade;
- (d) Completes, during the twelfth grade, 120 hours of work in a community service role or in a position of employment, including internships work study, co-ops, and apprenticeships;
- (e) Earns three or more transcribed credit hours under the College Credit Plus program at any time during high school;
- (f) Passes an Advanced Placement (AP) or International Baccalaureate (IB) course, and receives a score of 3 or higher on the corresponding AP exam or a score of 4 or higher on the corresponding IB exam, at any time during high school;
- (g) Earns at least a level 3 score on each of the "reading for information," "applied mathematics," and "locating information" components of WorkKeys assessment;
- (h) Obtains an industry-recognized credential or a group of credentials equal to at least three total points; or
- (i) Satisfies the conditions required to receive an OhioMeansJobs-Readiness Seal.

Main alternative pathway – class of 2020

The main alternative pathway for the class of 2020 is substantially similar to the one for the class of 2019, except that:

- (a) A student in the class of 2020 may not use attendance in the twelfth grade as a condition to graduate;
- (b) A student in the class of 2020 must have a cumulative grade point average of 2.5 of courses taken during both the eleventh and twelfth grades (instead of just the twelfth grade);
- (c) A capstone project completed by a student in the class of 2020 must comply with guidance issued by the Department of Education; and
- (d) The student's completion of 120 hours of work in a community service role or a position of employment must comply with guidance developed by the Department in consultation with the Governor's Office of Workforce Transformation.



The guidance for both the capstone project and the completion of work must be issued by May 31, 2019. The guidance for the capstone project must describe the components of a successful capstone project and the process for evaluating each component, and ensure that each project is designed as a culmination of the student's high school experience. The guidance for the completion of 120 hours of work must describe the requirements for approval and verification of the work, and must indicate that it is preferable that students complete the work with an Ohio business or nonprofit organization.

Career-technical alternative pathway

The second pathway applies equally to the classes of 2019 and 2020. It qualifies a student for graduation if the student (1) takes all of the required end-of-course exams or takes an alternate assessment for chartered nonpublic school students, (2) completes the district's or school's required units of instruction, (3) completes a career-technical training program approved by the Department that includes at least four career-technical courses, and (4) completes *one* of the following other conditions:

(a) Attains a cumulative score of at least proficient on required career-technical education exams or test modules;

(b) Obtains an industry-recognized credential, or a group of credentials, equal to at least 12 points; or

(c) Demonstrates successful workplace participation, as evidenced by documented completion of 250 hours of workplace experience and by regular, written, positive evaluations from the workplace employer or supervisor and representative of the district or school. This condition must be based on a written agreement signed by the student, a representative of the district or school, and an employer or supervisor.

Recommendations for new permanent graduation requirements

The act states that the General Assembly intends to engage in ongoing discussions about modifying high school graduation requirements for students in the classes of 2020 and later. For that purpose, the act requires the Department of Education, in consultation with the business community, to make recommendations, as confirmed by the State Board of Education, to the General Assembly about revising diploma requirements for students in public or chartered nonpublic high schools. The recommendations must include a long-term proposal that reduces reliance on state testing, encourages local innovation, and supports student readiness for a career, college, and life. They also must include a transition plan to allow time for implementation of the new requirements. The Department must present the recommendations to the House and Senate Education committees by April 1, 2019, for



consideration for inclusion in the main operating budget of the 133rd General Assembly.¹³

Policy on assignments missed during suspension

The act replaces a provision enacted earlier in 2018, requiring that students be permitted to complete classroom assignments missed during a suspension, with a requirement that each district or school adopt a policy for completing and grading those assignments. Each policy must provide the student an opportunity to (1) complete missed classroom assignments and (2) receive at least partial credit for any assignment completed. While the policy may permit grade reductions, it must prohibit assigning a failing grade solely because of the student's suspension.¹⁴

HISTORY

ACTION	DATE
Introduced	01-31-18
Reported, H. Education & Career Readiness	03-21-18
Passed House (86-2)	06-07-18
Reported, S. Education	12-06-18
Passed Senate (29-0)	12-06-18
House concurred in Senate Amendments (79-1)	12-06-18

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¹³ Section 5 of the act.

¹⁴ R.C. 3313.66(B)(3).

