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H.B. 409*
133rd General Assembly

Bill Analysis

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Version: As Reported by Senate Education

Primary Sponsor: Rep. Koehler

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SUMMARY

Attendance tracking and absence intervention

- Requires the attendance policy of each internet- or computer-based community school (e-school) that is *not* a dropout recovery school and each school district and STEM school to specify that a student is considered in attendance when the student meets specified instructional participation or course-completion rates.
- Requires an e-school that is *not* a dropout recovery school to submit a written report to the parent, guardian, or custodian of each student who has at least 30 hours of unexcused absences in any semester.
- Requires that e-schools, school districts, and STEM schools determine whether a remote learning student's absences trigger one or more absence intervention requirements and carry those out in the manner prescribed under continuing law.

COVID-19 measures for the 2020-2021 school year

Authority of the state Superintendent to adjust deadlines

- Authorizes the Superintendent of Public Instruction to adjust various deadlines, including those for teacher evaluations, school safety drills, and gifted screening requirements.

Educational requirements of substitute teachers

- Permits a public or chartered nonpublic school to employ a substitute teacher according to the school's own educational requirements.

* 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.

Retention under the Third-Grade Reading Guarantee

- Exempts schools for the 2020-2021 school year from retaining a student under the Third-Grade Reading Guarantee.

Report cards; sanctions and penalties

- Prohibits the Department of Education from publishing and issuing ratings for overall grades, components, and individual measures on the state report cards and submitting preliminary data for report cards for school districts and buildings for the 2020-2021 school year.
- Establishes a safe harbor from penalties and sanctions for districts and schools based on the absence of state report card grades for the 2020-2021 school year.
- Specifies that the safe harbor does not affect the awarding of performance-based Educational Choice (Ed Choice) scholarships for the 2021-2022 and 2022-2023 school years.

Community school sponsor ratings

- Establishes a safe harbor from penalties and sanctions for community school sponsors based on community school sponsor ratings for the 2020-2021 school year, in which only ratings from previous and subsequent years are considered.
- Allows a community school sponsor to remain eligible in the 2021-2022 school year for any incentives that the sponsor was eligible for in 2020-2021.

Emergency clause

- Declares an emergency for the bill's measures for the 2020-2021 school year.

DETAILED ANALYSIS

Attendance tracking and absence intervention

Attendance policy

The bill requires the attendance policy of each internet- or computer-based community school (e-school) in which a majority of the students are *not* enrolled in a dropout prevention or recovery program, each school district, and each STEM school to specify that a student who works primarily on assignments provided via internet- or other computer-based instructional method (remote learners) is considered in attendance when the student satisfies either of the following conditions:

1. The student participates in at least 90% of the hours of instructional activities offered by the school in that school year; or

2. The student is on pace for on-time completion, as defined by the school's attendance policy, of any course in which the student is enrolled.¹

It also specifies that if a student is not considered in attendance under either of the provisions above, that student must be considered absent for those hours of instructional activities offered by the school for the school year in which the student was absent.²

For purposes of a school's attendance policy, instructional activities are the following classroom-based or nonclassroom-based instructional activities that a student is expected to complete, participate in, or attend during any given school day:

1. Online logins to curriculum or programs;
2. Offline activities;
3. Completed assignments within a particular program, curriculum, or class;
4. Testing;
5. Face-to-face communications or meetings with school staff or service providers;
6. Telephone or video conferences with school staff or service providers; and
7. Other documented communication with school staff or service providers related to school curriculum or programs.³

The bill specifies that its attendance policy provisions do not affect the procedure for automatically withdrawing a student from an e-school for failing to participate in 72 consecutive hours of learning opportunities, which community schools already must include in their attendance policies under current law.⁴

E-school parent notification of unexcused absences

If a student enrolled in an e-school in which a majority of the students are *not* enrolled in a dropout prevention or recovery program has at least 30 hours of unexcused absences in any semester, the bill requires the school to submit a written report to the student's parent, guardian, or custodian.⁵

Absence intervention requirements

The bill's procedures address only the calculation of unexcused absences and do not affect a public school's responsibilities related to compulsory attendance and truancy. E-schools, school districts, and STEM schools must determine whether a student's absences

¹ R.C. 3314.261(B)(1), 3321.192(B)(1), and 3326.11.

² R.C. 3314.261(B)(2) and 3321.192(B)(2).

³ R.C. 3314.261(A).

⁴ R.C. 3314.261(F) and 3314.03(A)(6)(b).

⁵ R.C. 3314.261(B)(3).

trigger one or more absence intervention requirements and must carry those out in the manner prescribed under continuing law⁶

Background on absence intervention

Continuing law requires public schools (including e-schools) to have policies to guide employees in addressing and ameliorating student absences. Under that law, a student is considered excessively absent when the student's combined nonmedical excused absences and unexcused absences exceed 38 hours in one school month or 65 hours in a school year. At that time, the school (1) must notify the student's parent, guardian, or custodian, in writing, within seven days of the most recent triggering absence, (2) must provide the student with an intervention plan, and (3) may use any other appropriate intervention strategies to ameliorate the student's attendance issues. However, only a student's unexcused absences count toward truancy. If a student's *unexcused* absences surpass the threshold for an "habitual truant" (30 or more consecutive hours, 42 or more hours in one school month, or 72 or more hours in a school year),⁷ a school must assign the student to an absence intervention team which must create an intervention plan for the student. Other actions may be taken, if the student's attendance does not improve, including filing a complaint in the appropriate juvenile court and, ultimately, adjudication of the student by the court for unruliness or delinquency.⁸

COVID-19 measures for the 2020-2021 school year

In response to the COVID-19 pandemic, the bill adopts as emergency measures several educational provisions which apply only for the 2020-2021 school. Those provisions are described in turn below.

Authority of the state Superintendent to adjust deadlines

The bill authorizes the Superintendent of Public Instruction to adjust deadlines for the following:

1. District teacher evaluations;
2. District intent to reemploy notifications;
3. School safety drills;
4. Emergency management tests;
5. Requirements to fill a vacancy on a district board of education;
6. Updating teacher evaluation policies; and
7. Gifted screening requirements.

⁶ R.C. 3314.261(C)(1) and 3321.192(C).

⁷ R.C. 2151.011(A)(18), not in the bill.

⁸ R.C. 3321.19 and 3321.191, neither in the bill.

The bill specifies that the state Superintendent's authority to adjust deadlines does not apply to application windows for any state scholarship program.⁹

Educational requirements of substitute teachers

The bill permits a school district, community school, STEM school, or chartered nonpublic school to employ an individual as a substitute teacher according to the district's or school's own educational requirements, as long as all other requirements and procedures of statutory law and administrative rules are satisfied.¹⁰

Generally, educator licenses, permits, or certificates issued by the State Board of Education for teaching in grades K-12, except those for career-technical educators, require at least a bachelor's degree.

Retention under the Third-Grade Reading Guarantee

The bill exempts for the 2020-2021 school year schools from retaining a student under the Third-Grade Reading Guarantee based solely on the student's academic performance in reading, unless the student's principal and reading teacher determine the student is not reading at grade level and is not prepared for fourth grade.¹¹ H.B. 197 of the 133rd General Assembly previously granted this exemption to schools for the 2019-2020 school year.

Under continuing law, the Third-Grade Reading Guarantee is a program created to identify students in grades kindergarten through three who are reading below grade level. School districts and community 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. A third grader who does not take this assessment or fails to attain a passing score, unless otherwise exempted, could be denied promotion to the next grade level. A similar reading guarantee applies to students attending chartered nonpublic schools with an Educational Choice or Cleveland scholarship.¹²

Report cards; sanctions and penalties

The bill prohibits the Department of Education from publishing and issuing ratings for overall grades, components, and individual measures on the state report cards for any school districts or schools for the 2020-2021 school year. Similarly, it prohibits the Department from publishing any rankings of school buildings otherwise required under continuing law for the 2020-2021 school year. It also relieves the Department from the requirement to submit preliminary data for report cards for school districts and buildings. However, the Department

⁹ Sections 5 and 8 of the bill.

¹⁰ Sections 3 and 8 of the bill.

¹¹ Sections 4 and 8 of the bill.

¹² R.C.3301.163 and 3313.608, neither in the bill.

must report any data that it has regarding the performance of districts and buildings for the 2020-2021 school year by September 15, 2021.¹³

The bill establishes a safe harbor from penalties and sanctions for districts and schools based on the absence of state report card ratings for the 2020-2021 school year. The bill includes safe harbor from all of the following:

1. Restructuring under state law based on poor performance;
2. The Columbus City School Pilot Project;
3. Provisions for academic distress commissions and progressive consequences for existing commissions (but specifically retains the chief executive officer's powers prior to the 2020-2021 school year);
4. Buildings becoming subject to the Ed Choice Scholarship (see below);
5. Determination of "challenged school districts" where new start-up community schools may be located;
6. Community school closure requirements;
7. Identification of school districts and buildings for federal and state targeted support and improvement; and
8. Restrictions to which community schools may change sponsors.

Additionally, the bill specifically states that the state report card ratings of previous and subsequent school years still must be used in determining sanctions and penalties. It further states that the 2020-2021 school year does not create a new starting point for such determinations that are based on multiple years of state report card ratings.¹⁴

H.B. 197 of the 133rd General Assembly, effective March 27 2020, contained a similar prohibition against the issuance of state report card ratings and a safe harbor from sanctions and penalties based on those ratings.¹⁵

Ed Choice performance-based scholarships and safe harbor

The bill expressly states that the safe harbor regarding state report card ratings for the 2020-2021 school year does not affect the awarding of performance-based Educational Choice (Ed Choice) scholarships for the 2021-2022 and 2022-2023 school years.¹⁶

Beginning with the 2021-2022 school year, S.B. 89 of the 133rd General Assembly, effective March 2, 2021, changes the eligibility criteria for a first-time, performance-based Ed Choice scholarship. Specifically, that act reworks the existing performance index ranking criteria

¹³ Section 6(A) of the bill.

¹⁴ Section 6(B) of the bill.

¹⁵ Section 17(B) of H.B. 197 of the 133rd General Assembly, not in the bill.

¹⁶ Section 6(C) of the bill.

and eliminates other criteria that relied on state report card letter grades to determine student eligibility. Under S.B. 89, a performance-based scholarship sought for the 2021-2022 or 2022-2023 school year under the performance index ranking criteria must be based on performance index rankings for each of the 2017-2018 and 2018-2019 school years. By contrast, performance index rankings for the 2020-2021 school year are only used to determine student eligibility beginning in the 2023-2024 school year.¹⁷

In addition, S.B. 89 contains an uncodified provision under which a student may qualify for a first-time, performance-based scholarship for the 2021-2022 school year. Under that provision, a student may qualify for a performance-based scholarship if the student (1) was enrolled in school in any of grades K-12, or homeschooled for the equivalent, in the 2020-2021 school year, (2) qualified for a performance-based scholarship for the 2020-2021 school year, and (3) would be enrolled in a district school building that was Ed Choice designated in the 2019-2020 school year.¹⁸

Thus, it appears that the bill's safe harbor provision regarding state report card ratings for the 2020-2021 school year will not affect a student's performance-based scholarship eligibility for the 2021-2022 or 2022-2023 school year. Rather, the provision may not affect a student's eligibility until the 2023-2024 school year.

Community school sponsor ratings

The bill specifies that community school sponsor ratings for the 2020-2021 school year has no effect in determining sanctions or penalties of community school 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 2021-2022 school year for any incentives that the sponsor was eligible for in 2020-2021. The bill specifically states that the 2020-2021 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.¹⁹

H.B. 164 of the 133rd General Assembly, effective June 19, 2020, prohibits the Department of Education from issuing any community school sponsor ratings for the 2019-2020 school year and establishes a similar safe harbor for community school sponsors based on the absence of ratings for that school year.²⁰

¹⁷ R.C. 3310.03, as amended by S.B. 89 of the 133rd General Assembly, not in the bill.

¹⁸ Section 5 of S.B. 89 of the 133rd General Assembly, not in the bill.

¹⁹ Section 6(D) of the bill.

²⁰ Section 17(F) of H.B. 197 of the 133rd General Assembly, as amended in Sections 5 and 6 of H.B. 164 of the 133rd General Assembly, not in the bill.

HISTORY

Action	Date
Introduced	11-13-19
Reported, H. Primary & Secondary Education	05-19-20
Passed House (90-0)	11-19-20
Reported, S. Education	---
