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H.B. 409
133rd General Assembly

Final Analysis

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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 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 an e-school that is *not* a dropout recovery school to adopt a policy regarding failure to participate in specified instructional activities, which includes student disenrollment for chronic absenteeism.
- Prohibits a student disenrolled from an e-school for absenteeism from enrolling in another e-school for one school year from the date of disenrollment, unless the student enrolls in an e-school in which a majority of the students are enrolled in a dropout prevention and recovery program.

COVID-19 measures for the 2020-2021 school year

Authority of 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.

Retention under Third-Grade Reading Guarantee

- Exempts schools 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.
- Establishes a safe harbor from penalties and sanctions for districts and schools based on the absence of 2020-2021 state report card grades.
- 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, 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.

DETAILED ANALYSIS

Attendance tracking at e-schools

Attendance policy

The act 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 to specify that a student 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

¹ R.C. 3314.261(B)(1).

It also specifies that if a student is not considered in attendance under either condition, 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

The classroom-based or nonclassroom-based instructional activities that a student is expected to complete, participate in, or attend during any given school day include the following:

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 act 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 continuing law.⁴

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 school must submit a written report to the student's parent, guardian, or custodian.⁵

Failure to participate in instructional activities

Policy

The act exempts an e-school in which a majority of the students are *not* enrolled in a dropout prevention or recovery program from the requirement to adopt an attendance policy as required under continuing law. Instead, it requires such an e-school to adopt a policy regarding failure to participate in the instructional activities specified above.⁶

² R.C. 3314.261(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).

⁶ R.C. 3314.03(A)(11)(d) and (l) and 3314.261(C).

The policy adopted by an e-school must state that a student becomes subject to certain consequences, including disenrollment from the school, if:

1. After the student has at least 30 hours of unexcused absences in a semester and the student's parent, guardian, or custodian receives the required written report (see above), the student fails to comply with the policy within a reasonable time period specified by the school; and
2. Other intervention strategies contained in the policy have been undertaken and have not resulted in the student's attendance compliance with the policy.⁷

Disenrollment

If a student of such an e-school is disenrolled, the school must provide the student's parent, guardian, or custodian with a list of alternative educational options available to the student. Additionally, the e-school must provide written notice to the student's resident school district within 48 hours of the student's disenrollment.⁸

A disenrolled student also is prohibited from enrolling in that school or another e-school for one school year, unless the student enrolls in an e-school in which a majority of the students are enrolled in a dropout prevention and recovery program.⁹

Background

For a discussion of the law on absence interventions that continue to apply to school districts, STEM schools, brick-and-mortar community schools, and dropout prevention and recovery community schools, and for a general discussion of the compulsory attendance law and truancy enforcement, see the LSC Members Brief, [Compulsory School Attendance and Truancy Intervention](#).

COVID-19 measures for the 2020-2021 school year

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

Authority of state Superintendent to adjust deadlines

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

1. District teacher evaluations;
2. District intent to reemploy notifications;
3. School safety drills;
4. Emergency management tests;

⁷ R.C. 3314.261(C)(1) and (2).

⁸ R.C. 3314.261(E).

⁹ R.C. 3314.261(D).

5. Requirements to fill a vacancy on a district board of education;
6. Updating teacher evaluation policies; and
7. Gifted screening requirements.

The act specifies that the state Superintendent's authority to adjust deadlines does not apply to application windows for any state scholarship program.¹⁰

Educational requirements of substitute teachers

The act 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.¹¹

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 act exempts 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.¹² H.B. 197 of the 133rd General Assembly, effective March 27, 2020, previously granted this exemption for the 2019-2020 school year.¹³

Report cards; sanctions and penalties

The act 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 must report any data that it has regarding the performance of districts and buildings for the 2020-2021 school year by September 15, 2021.¹⁴

¹⁰ Sections 5 and 7 of the act.

¹¹ Sections 3 and 7 of the act.

¹² Sections 4 and 7 of the act.

¹³ Section 17(C) of H.B. 197 of the 133rd General Assembly, not in the act.

¹⁴ Section 6(A) of the act.

Safe harbor

The act 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. Its safe harbor applies to:

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 act 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.¹⁵

H.B. 197 of the 133rd General Assembly contained a similar prohibition against the issuance of state report card ratings for the 2019-2020 school year and a safe harbor from sanctions and penalties based on those ratings.¹⁶

Ed Choice performance-based scholarships and safe harbor

The act expressly states that the safe harbor regarding state report card ratings for the 2020-2021 school year does not affect awards of performance-based Educational Choice (Ed Choice) scholarships for the 2021-2022 and 2022-2023 school years.¹⁷

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 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 2021-2022 or 2022-2023

¹⁵ Section 6(B) of the act.

¹⁶ Section 17(B) of H.B. 197 of the 133rd General Assembly, not in the act.

¹⁷ Section 6(C) of the act.

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 used to determine student eligibility beginning in the 2023-2024 school year.¹⁸

In addition, S.B. 89 qualifies a student for a first-time, performance-based scholarship for the 2021-2022 school year 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.¹⁹

Thus, it appears that the act'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.

Community school sponsor ratings

The act specifies that community school sponsor ratings for the 2020-2021 school year have no effect in determining sanctions or penalties for sponsors. 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 for which they were eligible in 2020-2021. The act 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.²⁰

H.B. 164 of the 133rd General Assembly, effective June 19, 2020, prohibited the Department of Education from issuing any community school sponsor ratings for the 2019-2020 school year and established a similar safe harbor for community school sponsors based on the absence of ratings for that school year.²¹

¹⁸ R.C. 3310.03, as amended by S.B. 89 of the 133rd General Assembly, not in the act.

¹⁹ Section 5 of S.B. 89 of the 133rd General Assembly, not in the act.

²⁰ Section 6(D) of the act.

²¹ 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 act.

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	12-17-20
Passed Senate (32-0)	12-17-20
House concurred in Senate amendments (83-3)	12-22-20
