Jennifer Stump *Legislative Service Commission*
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Am. Sub. H.B. 364

124th General Assembly
(As Passed by the House)

Reps. Husted, Clancy, Calvert, Raga, DeWine, Seitz, Setzer, White, Goodman, Gilb, Faber, Webster, Schaffer, Brinkman, Flowers, Callender, Schmidt, Williams, Grendell, Young, Widowfield, Schneider, Wolpert, Blasdel, Allen, Reidelbach, Evans, Cates, Lendrum, Niehaus

BILL SUMMARY

- Permits the establishment of start-up community schools in any school district in the state.
- Eliminates the authority of the State Board of Education to sponsor community schools two years after the effective date of the bill.
- Makes the Department of Education responsible for the oversight of sponsors of community schools and for providing technical assistance to schools, sponsors, and proposing parties in developing schools.
- Authorizes the Department of Education to approve entities for sponsorship of community schools.
- Permits the Department of Education to assume the sponsorship of a community school in the case where the school's sponsor fails to comply with its obligation as a sponsor.
- Limits to 225 the total number of start-up community schools that can operate statewide for two years after the bill's effective date.
- Permits all educational service centers to sponsor start-up community schools anywhere in Ohio (including the ESC serving Lucas County which can currently sponsor schools in Lucas County).
- Permits federally tax exempt entities that meet certain conditions to sponsor start-up community schools.
- Specifies contractual duties of community school sponsors.

- Permits a sponsor to extend the term of a community school contract.
- Permits a sponsor to declare a community school under its sponsorship to be in a probationary status under certain conditions rather than suspend the operation of the school or terminate its contract with the school.
- Specifies the structure of a community school governing authority.
- Prioritizes the distribution of the assets of a closed community school.
- Permits a community school to borrow against future revenue for an unspecified period of time.
- Places a 3% limit on community school sponsor fees for oversight and monitoring.
- Permits single-gender community schools.
- Permits the establishment of community schools for gifted students.
- Makes changes in the law regarding termination of a community school contract and the suspension of operation of a community school.
- Makes changes in the law regarding the transportation of community school students.
- Permits all community schools to participate in the Community School Classroom Facilities Loan Guarantee Program and permits loans guaranteed under the program to be used for new construction of school buildings.
- Removes the limit on maximum program liability (of $10 million) under the Community School Classroom Facilities Loan Guarantee Program.
- Creates the Community School Classroom Facilities Support Program.
- Permits community schools to lease-purchase property.
- Creates the Community School Revolving Loan Fund.
- Makes other changes in the community school law.

- Adds a representative from the Office of the Auditor of State to the Alternative Education Advisory Council beginning January 1, 2003.

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CONTENT AND OPERATION

Background

Community schools (often called "charter schools") are public, nonprofit, nonsectarian schools that operate independently of any school district but under contract with a public sponsor. They are exempt from many education laws and often serve a limited number of grades or a particular purpose. Conversion community schools may be sponsored by any school district in the state. Start-up community schools, on the other hand, are new schools that may be established only in "challenged school districts," which include all "Big-Eight" districts, the 13 other large urban districts, all Lucas County districts, and any district declared to be in a state of academic emergency.[1]

[1] *The "Big-Eight" districts are Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown. The other 13 large urban districts (that together with the "Big-Eight" districts are sometimes referred to as the "Urban 21" districts) are Cleveland Heights, East Cleveland, Elyria, Euclid, Hamilton, Lima, Lorain, Mansfield, Middletown, Parma, South-Western, Springfield, and Warren.*

A start-up school may be sponsored by any of the following:

(1) The board of education of the challenged school district in which the school will be located;

(2) The board of education of any other local, exempted village, city, or joint vocational school district with territory in the county in which the majority of territory of the challenged school district is located;

(3) The State Board of Education.

In Lucas County, a start-up school also may be sponsored by the Lucas County Educational Service Center and the University of Toledo Board of Trustees or its designee.

Location of start-up community schools

The bill eliminates the restriction on the location of start-up community schools to just "challenged school districts" and specifically permits the location of a school in any school district in the state.[2]

Additional entities may sponsor start-up community schools

The bill eliminates the authority of the State Board of Education to sponsor start-up community schools two school years after the bill's effective date.[3] However, it also adds some new entities that can sponsor schools.

The bill, first, retains current law by specifying that school districts may sponsor start-up schools. The bill also permits *any* educational service center (in addition to the ESC serving Lucas County as under current law) to sponsor start-up schools.[4] Finally, the bill permits an entity that is a qualified tax exempt entity under federal tax law to sponsor schools as long as the entity either has been in operation for at least five years or has assets of at least $500,000.[5]

An "academic emergency" district is one that does not meet more than five of 17 performance indicators to be adopted by the State Board of Education or the equivalent number of indicators if the State Board adopts more than 17 total indicators.

[2] *R.C. 3314.02(C)(1).*

[3] *R.C. 3314.02(C)(1)(d) and Section 6 of the bill.*

[4] *R.C. 3314.02(C)(1)(d).*

[5] *R.C. 3314.02(C)(1)(e).*

Changes in Department of Education and State Board of Education responsibilities

As noted above, the bill eliminates the authority of the State Board of Education to sponsor community schools. However, the bill permits the Board to continue to sponsor a school under an existing contract until the *earlier* of the expiration of two school years or until the school can secure new sponsors.[6] Instead of sponsoring schools, the Department of Education under the bill is to be the statewide agency overseeing the entire community school program. Specifically, the Department is responsible for oversight of school sponsors and for providing technical assistance to proposing parties, sponsors, and schools in development and start-up activities.[7] The Department is further required to conduct training sessions; distribute informational materials; approve entities for sponsorship; issue an annual report to the Governor and the General Assembly on the academic effectiveness, legal compliance, and financial condition of the state's community schools; and from time to time make legislative recommendations.

Approval of sponsors

No entity, except for certain current sponsoring entities, is permitted to sponsor community schools until is has been approved by the Department of Education for such sponsorship and has entered into a written agreement with the Department regarding the manner in which it will conduct its sponsorship.[8] The Department is required to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) that set up criteria, procedures, and deadlines for approving sponsors. The rules also must establish guidance on oversight of sponsors, revocation of approval of sponsors, and the written agreements between the Department and sponsors. Once approved as a sponsor, an entity may enter into any number of preliminary agreements and sponsor contracts with community schools.

Current sponsors, not including the State Board, may continue to sponsor schools in conformance with their existing contracts and the provisions of the community school law as amended by the bill. These entities, however, are not required to ever be subject to approval by the Department of Education or to enter into written agreements with the Department. They may also contract with new

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[6] *Section 6 of the bill.*

[7] *R.C. 3314.015(A).*

[8] *R.C. 3314.015(B).*

schools as long as they continue to comply with all other provisions of the community school law.[9]

The decision of the Department to disapprove an entity for sponsorship or to revoke such approval may be appealed under the Administrative Procedure Act.[10]

Assume school sponsorship if sponsor fails to comply with law or contract

If at any time the State Board of Education finds that a sponsor is no longer willing or able to comply with its duties, the Board or designee must conduct an administrative hearing on the matter. If the Board or designee confirms the finding, then the Department must revoke the entity's approval to be a school sponsor and must assume sponsorship until a new sponsor can be found. The Department's authority to sponsor under such a case lasts only for up to two school years.[11]

Duties of a school sponsor

In order to sponsor a community school, a sponsor must be approved by the Department of Education and enter into a written agreement with the Department. The agreement is to outline how the entity intends to comply with its monitoring and oversight duties.[12] A sponsor also must be located or have a representative located within 50 miles of the school location.[13] In addition, the contract between the governing authority of the school and the sponsor must contain certain provisions relating to what the sponsor will do for the school. Under these provisions, the sponsor must agree to monitor the school's compliance with all applicable laws and terms of the contract, monitor and evaluate the academic and fiscal performance of the school at least annually, report the results of that evaluation to the Department and the parents of students in the school, provide technical assistance, take steps to intervene in the school's operation to correct problems in the school's overall performance, and have a plan of action for use in

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[9] *Section 6 of the bill.*

[10] *R.C. 3314.015(D). The Administrative Procedure Act specifies a hearing procedure to appeal an administrative decision. It also provides for the right to appeal the decision of the hearing examiner to a court of common pleas and higher appellate courts.*

[11] *R.C. 3314.015(C).*

[12] *R.C. 3314.015(B) and 3314.03(D).*

[13] *R.C. 3314.023.*

the event the school falls into financial difficulties and closes before the end of a school year.[14]

Extension of the contract term

Generally, the term of a community school contract is five years. The bill permits a sponsor, with the approval of the school's governing authority, to extend that term during the course of the contract if the sponsor finds that the school's compliance with the law and contract and academic performance is satisfactory. In such case, the sponsor determines the term of the contract.[15]

Monitoring and oversight fees

Current law permits a sponsor to receive payments from the community school for its services. The bill limits the amount of those payments for monitoring and oversight to 3% of the total state payments a school receives for operations.[16]

Organization of the governing authority of a community school

The bill provides that each start-up community school must be under the direction of its own governing authority, which must be a board of at least five individuals who are not owners or employees of any for-profit firm that operates or manages a school for the governing authority. The bill prohibits anyone who owes the state money or is in a dispute over owing the state money in regard to a closed community school from serving on a school's governing authority.[17]

Ethics considerations

Under current law, community schools must comply with the state law on public agency ethics, which among other things requires disclosure of conflicts of interest and prohibits having interests in public contracts under the agency's control. Currently, members of community school governing authorities are permitted to have interests in contracts with their respective authority. Generally, such members often are employed by the authority to perform services or provide goods. The bill retains the current law, but it restricts an individual from having

[14] *R.C. 3314.03(D).*

[15] *R.C. 3314.03(A)(13) and (E).*

[16] *R.C. 3314.03(C).*

[17] *R.C. 3314.02(E).*

an interest in a for-profit firm that has a contract with the governing authority for the operation or management of a school.[18]

Documentation requirements for management companies providing services to community schools

The bill requires that each management company that provides services to a community school that amounts to more than 20% of the annual gross revenues of the school provide a detailed accounting including the nature and costs of the services it provides to the community school. This information is to be included in the footnotes of the financial statements of the school and be subject to audit during the course of the regular financial audit of the community school.[19]

Fiscal officer qualifications

Each community school must have a fiscal officer. The bill specifies that the individual who is so employed must be a licensed school treasurer or business manager or must complete at least 16 hours of continuing education classes in school accounting.[20]

Five-year budget projections

The bill requires the governing authority of a community school to file with the Department of Education an annual five-year revenue and expenditure projection in the same manner as required for school district boards of education.[21]

Governing authority annual report

The governing authority of a community school is required under continuing law to issue an annual report of the school's activities, academic progress, and financial condition. The report is to be submitted to the school's sponsor, the parents of the school's students, and the Legislative Office of Education Oversight. The bill specifies that this report must be submitted within four months after the end of each school year.[22]

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[18] *R.C. 3314.03(A)(11)(e).*

[19] *R.C. 3314.024.*

[20] *R.C. 3314.16.*

[21] *R.C. 3314.03(A)(11)(d). For law as it applies to school districts, see R.C. 5705.391, not in the bill.*

[22] *R.C. 3314.03(A)(11)(g).*

Temporary limit on start-up community schools

The bill establishes a two-year limit on the total number of start-up community schools that can be in operation statewide. For two years after the effective date of the bill, there can be only 225 such schools operating under contracts with sponsors.[23]

Disclaimer to parents

The bill requires that each community school and any operator of a community school place a specified disclaimer in a conspicuous manner in all documents that are distributed to parents of students enrolled in the school or that are distributed to the general public. That disclaimer is to read as follows:

> The _____ (here fill in name of the school) school is a community school established under Chapter 3314. of the Revised Code. The school is a public school and students enrolled in and attending the school are required to take proficiency tests and other examinations prescribed by law. In addition, there may be other requirements for students at the school that are prescribed by law. Students who have been excused from the compulsory attendance law for the purpose of home education as defined by the Administrative Code shall no longer be excused for that purpose upon their enrollment in a community school. For more information about this matter contact the school administration or the Ohio Department of Education.[24]

Limiting community schools targeted at "at risk" students to students identified as gifted

A community school may limit its enrollment to a specific age group, to students from a geographical area defined in the school's contract with its sponsor, and to certain "at risk" students also as defined in the school's contract. The bill provides that for purposes of defining "at risk," the contract may include students identified as gifted students. The bill, thus, permits a school to limit its enrollment

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[23] *R.C. 3314.013(A)(3).*

[24] *R.C. 3314.041.*

to just students identified as gifted students who satisfy the contractually defined description of "at risk."[25]

Termination of community school contracts

Under continuing law, the sponsor of a community school is responsible for monitoring the activities of the school and for ensuring that the school complies with its contract. Currently, a sponsor may decide to terminate or not to renew the contract with a community school any time during a school year for statutorily specified reasons with 90-days notice.[26] The governing authority may request that the sponsor conduct an informal hearing on the matter of termination or nonrenewal.[27] The decision of the sponsor following the hearing may be appealed to the State Board of Education, whose decision on the matter is final.[28]

The bill provides that a termination may not be effective until the conclusion of the school year.[29] (See **COMMENT**.)

Suspension of school operations

Continuing law also authorizes a sponsor to suspend immediately the operation of a school for health and safety violations and to suspend (rather than terminate) the operation of a school for other reasons, but only after it has issued a notice of intent to suspend operation of the school. The notice must provide the school's governing authority with five days to offer a remedy. The governing authority of a school under suspension must notify the parents of any students enrolled in the school and school employees of the suspension, citing the reasons for the suspension.

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[25] *R.C. 3314.06 (B) and (E). Ordinarily, a school is not permitted to limit its enrollment based on the intellectual ability of students, but this provision permits limiting admission to a school to identified gifted students who meet the contractual definition of "at risk."*

[26] *The statutory reasons for termination or nonrenewal of a community school contract are: (1) failure to meet student performance requirements stated in the contract, (2) failure to meet generally accepted standards of fiscal management, (3) violation of any provision of the contract or applicable state or federal law, and (4) other good cause.*

[27] *Current law requires such an informal hearing to be held within 70 days of its request. The bill repeals this deadline.*

[28] *Continuing law provides that if the State Board is the sponsor of the school, there can be no further appeal after the informal hearing.*

[29] *R.C. 3314.07.*

The bill eliminates language specifying that it is the sponsor that may determine if a school is not in compliance with health and safety standards. The change would seem to leave such a determination to local inspectors, whose report the sponsor presumably can rely on to make the decision whether or not to suspend the operation of the school.[30]

In addition, the bill provides that if a sponsor does not take action to immediately suspend a school for known health and safety problems, the Department of Education may take such action.[31]

Probationary status

In lieu of termination or suspension as discussed above, the bill provides yet another path for a sponsor to take in intervening in the operation of a failing school. Under the bill, after consultation with the governing authority, the sponsor may issue a written declaration that the school is in a "probationary status" if it also has assurances that the governing authority can and will correct the undesirable conditions. This status may not extend beyond the end of the current school year.[32]

Distribution of assets of a closed school

The bill specifies priorities for the distribution of the assets in the event that a school permanently closes. In such case, the assets are to be distributed first to private creditors, employees of the school, and the retirement funds of employees of the school who are all owed compensation. Any remaining funds are to be paid to the state general revenue fund.[33]

Single-gender community schools

Generally, the governing authority of a community school must adopt procedures that do not discriminate in the admission of students on the basis of "race, creed, color, handicapping condition, or sex." The bill, however, permits the establishment of single-gender schools with comparable facilities and learning opportunities for both boys and girls as long as the purpose of such schools is to "take advantage of the academic benefits some students realize from single-gender

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[30] *R.C. 3314.072.*

[31] *R.C. 3314.03(A)(22) and 3314.072.*

[32] *R.C. 3314.073.*

[33] *R.C. 3314.074.*

instruction and facilities and to offer students and parents . . . the option of a single-gender education."[34]

Changes to the law regarding the counting of community school students for funding purposes

Background

Each community school receives funding on a per pupil basis, which the Department of Education deducts from the amounts that would otherwise be paid to the school districts where the students enrolled in the community school are entitled to attend school. For each student enrolled, the school receives the "formula amount," which is the recognized minimum base cost that must be spent on each student in a school year, times the cost-of-doing-business factor for the county in which the student's resident school district is located, plus an applicable weight for any special education or vocational education student. The school also receives some Disadvantaged Pupil Impact Aid for each student.

Adjustments to district formula ADMs when community school students omitted

For state funding purposes, each school district's enrollment (formally called the "formula ADM") is measured as the average daily number of students attending school during the first full school week in October. To this count is added (among other categories of students) those students who are legally entitled to attend school in the district but who instead enroll in community schools. This arrangement allows the school district (in most cases) to be credited with the state funding generated by those students before the money is transferred to the community schools. But if a community school opens after the first full week of October, the students presumably are not counted in any school district's formula ADM, while the community school's funding nevertheless is deducted from school districts.[35] In such a scenario, school districts would experience a net loss of state funds because their formula ADMs do not include the community school students, and the districts are never credited with the state funds generated by those students to offset the transfer.

The bill addresses this scenario by directing the Department of Education to adjust the formula ADM of any school district whenever a community school

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[34] *R.C. 3314.06(D) and (G).*

[35] *Specifically, R.C. 3317.03(E) allows a school district to count only those students who are actually "enrolled" in a school. If a community school delays its opening until after the first full week of October, the student technically is not "enrolled" during that week.*

student has been excluded from the appropriate school district's formula ADM by adding the student. After adjusting the formula ADM to include the student, the Department then must recalculate the district's state funds for the entire fiscal year based on that adjustment. The bill specifies that this requirement applies regardless of whether the student was enrolled in the community school during the first full week of October, when the district's formula ADM was counted.[36]

Community school students must be counted in district formula ADMs for the same proportion of the school year

The bill further specifies that a community school student is to be counted in the formula ADM of a school district "for the same proportion of the school year that the student is counted in the enrollment of the community school."[37]

Current law, not changed by the bill, requires the Department of Education to prorate state funding to a community school when a student is enrolled for less than a full school year.[38]

Technical change to provision of law regarding counting of all-day kindergarten students

Under continuing law, certain school districts may be eligible for state Disadvantaged Pupil Impact Aid (DPIA) payments for the provision of all-day, every-day kindergarten. For every community school student who is enrolled in all-day kindergarten and is from a district eligible for DPIA all-day kindergarten payments, the Department of Education must pay the community school one-half the formula amount. That payment is generally deducted from the payments credited to the community school student's home school district. The bill does not change this law, but it does make a technical correction by eliminating an inaccurate division reference in the current law.[39]

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[36] *R.C. 3317.03(F)(3).*

[37] *R.C. 3317.03(C)(2).*

[38] *R.C. 3314.08(L).*

[39] *R.C. 3314.13. There is a reference to reporting of students under division (B)(3) of R.C. 3314.08 (not in the bill). There is no such division in that section.*

Periodic payments to a school and due process considerations over disputed enrollments

Under current law, the Department makes periodic payments to community schools in much the same way that it adjusts the accounts of school districts for state foundation moneys owed. The law specifies that the Department must "adjust" the amounts of the moneys subtracted from school districts and then paid to community schools to "reflect any enrollment of students for less than the equivalent of a full school year."[40] The bill provides further statutory guidance to the Department in determining the full-time equivalency of community school students. First, it requires the State Board of Education to adopt rules governing initial payments and periodic adjusted payments. Second, it specifies that a student's percentage of full-time equivalency is the percentage the hours of "learning opportunities" offered to the student is of 920 hours. Third, it specifies that "learning opportunities" for each school, including both "classroom-based" and "non-classroom-based" opportunities, must be defined in the school's contract with its sponsor in accordance with requirements established by the Department. Fourth, the bill specifies that a student's enrollment is considered to cease on any of the following:

(a) The school receives documentation from the student's parent terminating the student's enrollment;

(b) The school receives documentation that the student is enrolled in another public or private school; or

(c) The school ceases to offer the specified learning opportunities.[41]

The bill also provides procedures for resolution of disputes over whether a student is enrolled in a school. The bill specifies that if the Department determines that a review of a school's enrollment is necessary, the Department must conduct such a review and send written findings of the review to the school's governing authority and sponsor within 90 days of the end of the school's fiscal year. This period may be extended for another 30 days under agreement between the school and the Department or if the school has caused delays in data submission. If payment is owed to the school, that payment must be made within 30 days of the notice of findings. If the school owes the state money, the school may request an appeal within ten business days of the notice of findings. If the school files a timely appeal, the State Board or its designee must conduct an

[40] *R.C. 3314.08(L).*

[41] *R.C. 3314.08(L)(2) and (3).*

informal hearing on the matter. If the Board has enlisted a designee, that designee must certify its decision to the Board, which can accept or reject the decision. Any decision made by the Board on the matter is final.[42]

Attendance policy

Current law requires the governing authority of each community school to establish a dismissal policy which is part of its contract with the school's sponsor. The bill further requires that the contract contain a requirement that the authority adopt an *attendance* policy. That policy is required to include a procedure for "automatically withdrawing" any student who fails without legitimate excuse to participate in 105 consecutive hours of learning opportunities offered to the student. Under such policy, a student must be withdrawn by the end of the 30th day after the student has failed to participate as required.[43]

Borrowing authority

Under current law, a community school may borrow for "necessary and actual expenses" against its expected state payments for up to one fiscal year. In addition, a school may borrow moneys for up to 15 years to participate in the Community School Classroom Facilities Loan Guarantee Program (see "***Changes to the Community School Classroom Facilities Loan Guarantee Program***" below). The bill permits a school to borrow against expected state payments for an unspecified term and it permits borrowing for up to 15 years for *any* facilities acquisition.[44]

Title I allocations

The bill requires the Department of Education to include community schools in its annual allocation of federal moneys under Title I of the Elementary and Secondary Education Act of 1965.[45]

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[42] *R.C. 3314.08(0).*

[43] *R.C. 3314.03(A)(6).*

[44] *R.C. 3314.08(J).*

[45] *R.C. 3314.081. Title I (20 U.S.C. 6301 et. seq.) is the largest federal education funding program. It provides moneys to local educational agencies through the states for educational services for disadvantaged students. The moneys also may be spent on schoolwide programs in any school where a substantial specified proportion of the school's students come from low-income families.*

Community school compliance with EMIS

Under the Education Management Information System (EMIS), school districts and community schools are required to report specified student, building, personnel, and fiscal data electronically to the Department of Education.

The bill retains the requirement that community schools comply with EMIS, but it specifies how community schools are to comply and permits the State Board of Education to tailor the system to community schools' circumstances.[46] First, it permits the State Board of Education to distinguish methods and timelines for community schools to annually report their data. These methods and timelines must be appropriate to the academic schedules and financing of community schools. They cannot, however, modify the actual data that is to be reported under EMIS.

Second, the bill designates the financial officer of each community school as the individual responsible for reporting the school's data through EMIS.[47] It makes that officer liable to a $100 civil penalty for:

(1) Willfully failing to report data in any one year;

(2) Willfully reporting erroneous, inaccurate, or incomplete data in any one year; or

(3) Negligently reporting erroneous, inaccurate, or incomplete data in the current *and* a previous year.

The penalty may be imposed by the state Superintendent of Public Instruction, but only after affording the officer with notice and an opportunity for a hearing under the state Administrative Procedure Act (*i.e.*, R.C. Chapter 119.). The bill specifies that this new authority to impose a civil penalty does not preclude the State Board of Education from also exercising its pre-existing authority to suspend or revoke the license of a community school employee who willfully reports erroneous, inaccurate, or incomplete data to EMIS.[48]

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[46] *R.C. 3314.03(A)(11)(d) and 3314.17.*

[47] *R.C. 3314.011, which the bill renumbers as R.C. 3314.16, requires each community school to designate a financial officer. The Auditor of State may require each financial officer to post a bond conditioned on the faithful performance of all duties required of the officer.*

[48] *R.C. 3301.0714(N), not in the bill.*

Contracting for service to disabled students

The bill specifically permits the governing authority of a community school to contract with the governing authority of another community school, a school district board of education, the governing board of an educational service center, a county MR/DD board, or a nonpublic school administrative authority for the provision of services to disabled students who are enrolled at the school. It also requires that any school district board negotiate with a community school governing authority for those services in the same manner as it would negotiate with another school district board.[49]

Transportation of community school students

Under current law, the school district in which a student who is enrolled in a community school is entitled to attend school is required to provide transportation for that student in the same manner as it provides transportation for students attending the district's own schools.[50] On the other hand, a school district is not required to provide transportation for any students attending a community school with which the district has entered into a contract providing for the community school to transport its students. If a community school enters into such a contract, it currently must transport each of its students in grades kindergarten through eight who live more than two miles from the school and all handicapped students. In addition, the school is eligible for a payment of $450 for each transported student who lives more than *one* mile from the school.[51] The payment is deducted from the transportation moneys the state credits to the school district in which the community school students reside. The $450 amount is adjusted in subsequent fiscal years by the annual change in the Consumer Price Index for urban transportation.

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[49] *R.C. 3314.022.*

[50] *Generally, a school district board must transport all community school students in grades kindergarten through eight residing in the district who live more than two miles from the school. A district board is not required to transport nonhandicapped students to and from a community school located in another district if the drive time is more than 30 minutes. In addition, a district board may make a payment in lieu of transportation to the parent of any student for whom it is impractical to provide transportation.*

[51] *The school may receive the payment also for any student for whom it makes a payment in lieu of transporting.*

Transportation obligation

The bill specifically treats pupils attending a community school the same as pupils attending public and nonpublic schools for purposes of the school district transportation obligation. However, it maintains current law allowing a school district and a community school to enter into a contract making the community school responsible for the transportation of its own students.

In general, a school district must transport public, nonpublic, and community school pupils in grades kindergarten through eight who live more than two miles from their school. School districts may provide transportation for pupils in grades nine through twelve to and from their public, nonpublic, or community high school. School districts must provide transportation for all children who "are so crippled that they are unable to walk to and from school." Where it is impractical to transport a pupil by school conveyance, a board of education may offer payment in lieu of providing such transportation (*see below*, ***Payment in lieu of transportation***). A board of education is not required to transport elementary or high school pupils to and from a nonpublic or community school if the travel time is more than 30 minutes.[52]

Changes in contract provisions

Under current law, the contract under which a community school accepts the responsibility to transport its own students is effective only if the Superintendent of Public Instruction certifies that the contract has been submitted to the Department of Education by a deadline set by the Department and that the contract specifies qualifications for student transportation.

In addition to these two criteria for a transportation contract to be effective, the bill requires that the Superintendent of Public Instruction must have certified that the transportation provided by the community school under the contract is subject to all provisions of the Revised Code and administrative law pertaining to pupil transportation. The sponsor of the community school also must sign the transportation agreement.

Currently, under a transportation contract, a community school must transport free of any charge at least its enrolled students in grades kindergarten through eight who live more than two miles from the school. It may also choose to transport (and receive the per pupil payment for transporting) any students who live at least one mile from the school. The bill replaces this specific language with a general requirement for the community school to provide transportation free of

[52] *R.C. 3314.09 and 3327.01.*

any charge for each of its enrolled students who are eligible for transportation under the general law governing transportation of public and nonpublic pupils. (See "***Transportation obligation***" above.)

Currently, if a community school assumes transportation responsibility under an agreement, it is entitled to a payment from the state, which is deducted from the state payments for transportation that otherwise would be paid to the students' home districts. The amount of the payment is $450 per pupil transported in fiscal year 2002 and that amount is inflated by the annual increase in the Consumer Price Index for all urban transportation in each subsequent fiscal year. Current law also authorizes a community school to make a payment in lieu of transporting a student if the drive time is more than 30 minutes. The bill eliminates these provisions, regarding the payment schedule and the payment in lieu of transporting if the drive time is more than 30 minutes. The bill requires instead that payment to a community school for transportation of eligible students or certain disabled students to be as specified in the contract. It authorizes a community school to provide or arrange transportation for enrolled students who are not eligible for transportation and to charge a fee up to the cost of the transportation service.[53]

Payment in lieu of transportation

Under current law, a school district must provide transportation for public and nonpublic school pupils in grades kindergarten through eight who live more than two miles from the school except when, in the judgment of such board and confirmed by the State Board of Education, transportation is unnecessary or unreasonable. In determining the necessity for transportation, the school district must consider availability of facilities and distance to the school. Where it is impractical to transport a pupil by school conveyance, a board of education may, in lieu of providing transportation, pay a parent, guardian, or other person in charge of the child, an amount per pupil, which may not exceed the average transportation cost per pupil.

In general, the bill codifies the current practice of the Department of Education concerning payment in lieu of transportation.[54] Under continuing law, a school district may decide that it is impractical to transport a public school pupil,

[53] *R.C. 3314.091.*

[54] *Many of these guidelines were developed based on an Ohio Supreme Court decision, Hartley v. Berlin-Milan Local School District (1982), 69 Ohio St. 2d 415.*

nonpublic school pupil, or a student attending a community school and offer payment in lieu of transportation.[55]

The bill outlines the steps that a board of education of a city, exempted village, or local school district must follow when considering payment in lieu of transportation for a pupil who otherwise is eligible for transportation to and from the school that the pupil attends.

First, the board of education must consider each of the following factors:

(1) The time and distance required to provide the transportation;

(2) The number of pupils to be transported;

(3) The cost of providing transportation in terms of equipment, maintenance, personnel, and administration;

(4) Whether similar or equivalent service is provided to other pupils eligible for transportation;

(5) Whether and to what extent the additional service unavoidably disrupts current transportation schedules;

(6) Whether other reimbursable types of transportation are available.

Second, the board may pass a resolution declaring the impracticality of transportation. The resolution must be based on its consideration of the factors listed above and must include each pupil's name and the reason for impracticality.

Third, the board must report its determination to the State Board of Education in a manner determined by the State Board. As under current law, the board of education of a local school district *additionally* must submit the resolution to the educational service center (ESC) that contains the local district's territory for concurrence. If the ESC considers transportation by school conveyance to be practicable, the local board must provide the transportation; if the ESC concurs in the resolution of impracticality, the local board must proceed in accordance with the steps described below.

Fourth, the board of education must offer to provide payment in lieu of transportation by doing the following:

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[55] *R.C. 3327.01. The offer of payment in lieu of transportation is not available if the transportation time is more than 30 minutes.*

(1) In accordance with guidelines established by the Department, informing the pupil's parent, guardian, or other person in charge of the pupil (hereafter, "parent") of the board's resolution and the parent's right to accept the offer of payment in lieu of transportation or to reject the offer and instead request the Department to initiate mediation procedures.

(2) Issuing the parent a contract or other form with an option to accept or reject the board's offer of payment in lieu of transportation.[56]

Acceptance of payment

If the parent accepts the offer of payment in lieu of providing transportation, the board must pay an amount within a range established by the Department, the upper end of which is the amount determined by the Department as the average cost of pupil transportation for the previous school year. Payment may be prorated if the time period involved is only a part of the school year.[57]

Rejection of payment

If a parent rejects the offer of payment in lieu of transportation, the Department, upon the parent's request, must conduct mediation procedures. The school district must provide transportation for the pupil from the time mediation is requested until the matter is resolved either through the mediation process or by the State Board of Education. If the mediation does not resolve the dispute, the State Board must conduct an administrative hearing in accordance with Chapter 119. of the Revised Code. The State Board may approve the payment in lieu of transportation or may order the board of education to provide transportation. The bill specifies that the decision of the State Board is binding in subsequent years and on future parties in interest provided the facts of the determination remain comparable.[58]

Sanctions for failure to transport

If the Department determines that a school district board has failed or is failing to provide transportation after mediation is requested or as ordered by the State Board after the administrative hearing, the Department must order the school district board to pay to the parent an amount equal to the state average daily cost

[56] *R.C. 3327.02.*

[57] *R.C. 3327.02.*

[58] *R.C. 3327.02.*

of transportation as determined by the State Board for the previous year.[59] The school district board must make payments on a schedule ordered by the Department.[60]

If the Department subsequently finds that a school district board is not in compliance with an order to make payments to the parent *and* the affected pupils are enrolled in a nonpublic or community school, the Department must deduct the amount that the board is required to pay under that order from any payments the Department makes to the school district board under the transportation part of the state funding formula. The Department must use the deducted moneys to make payments to the nonpublic or community school attended by the pupil. The deductions and payments continue until the school district board either complies with the Department's order to make payments to the parent or begins providing transportation.[61]

The bill directs a nonpublic or community school that receives transportation payments from the Department because of the failure of the school district board to make payments as ordered either to disburse the entire amount of the payments to the parent of the affected pupil or to use the entire amount of the payments to provide acceptable transportation for the affected pupil.[62]

Transporting Post-Secondary Enrollment Options students

Under the Post-Secondary Enrollment Options Program, high school students may attend a public or nonpublic college or university or a private career school part- or full-time and the state pays a proportional amount of the base cost otherwise credited to the student's home district to the institution the student attends for instructional costs. Community school students are entitled to participate in this program. Under the bill, if a community school provides or arranges transportation for its students in grades nine through twelve, the parents of certain of its Post-Secondary Enrollment Options students may apply to the school's governing authority for a full or partial reimbursement of the cost of transporting the student to the higher education institution.[63]

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[59] *This amount is the upper end that a school district may offer when making the offer of payment in lieu of transportation.*

[60] *R.C. 3327.02.*

[61] *R.C. 3327.02.*

[62] *R.C. 3327.02.*

[63] *R.C. 3365.08(D).*

Changes to the Community School Classroom Facilities Loan Guarantee Program

Generally, start-up community schools must arrange for their own buildings in which to operate. To aid in that effort, the General Assembly recently created a loan guarantee program to be administered by the Ohio School Facilities Commission (SFC). Under that program, start-up schools may apply for loan guarantees for up to 15 years on 85% of the principal and interest on loans to acquire buildings.[64]

Currently, that program applies only to start-up schools. The bill permits conversion community schools to also apply for loan guarantees under the program.[65]

The bill repeals the current definition of "classroom facilities" for purposes of the loan guarantee program and instead defines "classroom facilities" as "buildings, land, grounds, equipment, and furnishings used by a community school in furtherance of its mission and contract."[66]

The bill further specifies that loans that are guaranteed under the program may be used for "improving or replacing" in addition to "acquiring" classroom facilities (as under current law). Also, the law currently excludes new construction of facilities, but the bill specifically permits the guaranteed loans to be used for new construction.

Current law requires that the facilities meet SFC specifications, but the bill requires only that the facilities acquired, improved, or replaced meet applicable health and safety standards established for school buildings.[67]

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[64] *Am. Sub. H.B. 94 of the 124th General Assembly.*

[65] *R.C. 3318.50(A).*

[66] *R.C. 3318.50(A)(2). The loan guarantee program law currently defines "classroom facilities" as having the same meaning as in R.C. 3318.01 (the definition section of the Classroom Facilities Assistance Program). That section defines "classroom facilities" as "rooms in which pupils regularly assemble in public school buildings to receive instruction and education and such facilities and building improvements for the operation and use of such rooms as may be needed in order to provide a complete educational program, and may include space within which a child day-care facility or a community resource center is housed." In addition, the section specifies that "'classroom facilities' includes any space necessary for the operation of a vocational education program in any school district that operates such a program."*

[67] *R.C. 3318.50(B).*

Finally, the bill removes an aggregate program liability limit of $10 million imposed under current law.[68]

Creation of Community School Classroom Facilities Support Program

The bill creates a new program called the Community School Classroom Facilities Support Program. Under that program, in any fiscal year in which the General Assembly appropriates moneys specifically for that purpose, SFC must pay a stipend to each start-up community school. The stipend, which must be equal to $450 per pupil enrolled in the school, may be used to defray any rental or loan payments a school's governing authority makes for facilities used by the school.[69]

Lease-purchase authority

School districts and educational service centers are currently permitted to acquire buildings and building improvements through a statutory system of lease-purchase agreements. Under such agreements, a district or ESC may enter into up to 30 one-year renewable leases with the possibility of acquiring fee simple to the property at the end of the lease period. The bill adds community school governing authorities to the list of entities that may use this method to acquire property.[70]

Community School Revolving Loan Program

The bill creates a new revolving loan program to assist start-up community schools in paying the costs associated with complying with contract terms. Loans under the program are to be made for up to five years and are paid back by automatic deductions from the school's state operations payments. The rate of interest of each loan is the rate that would be earned on the same money if invested in the state "subdivision's fund" (STAROhio fund) maintained by the state treasurer to hold short-term subdivision investments. A school may receive more than one loan from the new fund created for this purpose, but over the life of the school's contract term it may receive a maximum of $250,000. The revolving loan fund may be made up of federal moneys and moneys appropriated by the General Assembly.[71] There is no appropriation for the fund in the bill.

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[68] *R.C. 3318.50(C).*

[69] *R.C. 3318.53.*

[70] *R.C. 3313.375.*

[71] *R.C. 3314.30.*

The principal paid back on each loan is to be redeposited in the revolving loan fund. The interest, on the other hand, is to be deposited in the Community School Security Fund (also created in the bill), which is supposed to be used to pay into the revolving loan fund to cover the amount of any defaults on loans.[72]

The bill specifies that in approving loans under the program, the Superintendent of Public Instruction may consider the soundness of the school's business plan, the availability of other funding sources, geographic distribution of loans, impact of the loan on the ability of a school to secure other funds, plans for the creative use of the loan moneys, and the financial needs of the school. In addition, the Superintendent is required to give priority to new schools to pay start-up costs.[73]

Study of funding methodologies and systems used in other states

The bill requires the Legislative Office of Education Oversight to conduct a study of the methodologies and statutory systems used in other states to fund their independent public charter schools. The Office is to compare those systems to the ones used in Ohio law and to submit a written report on the matter to the General Assembly by January 31, 2003.[74]

Membership of Alternative Education Advisory Council

The Alternative Education Advisory Council addresses issues regarding alternative educational programs for at-risk youth. Current members of the Council consist of one representative each from the Department of Education; the Department of Youth Services; the Department of Alcohol and Drug Addiction Services; the Department of Mental Health; the Office of the Governor, or the Office of the Lieutenant Governor if so designated by the Governor; and the Office of the Attorney General. The bill adds a representative from the Office of the Auditor of State to the Council beginning January 1, 2003.[75]

COMMENT

The bill's provision prescribing that a contract cannot be terminated prior to the end of a school year essentially returns the law on this matter to the way it was

[72] *R.C. 3314.30(G) and 3314.31.*

[73] *R.C. 3314.30(D) and (E).*

[74] *Section 5 of the bill.*

[75] *Sections 3 and 4 of the bill.*

structured just prior to enactment of Am. Sub. H.B. 94 of the 124th General Assembly (effective June 6, 2001). That act permitted termination of contracts during the course of a school year and prescribed the 90-day notice prior to termination (and the timeframes for the informal hearing to coincide with that notice requirement).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-13-01	pp. 829-830
Reported, H. Education	03-20-02	pp. 1593-1594
Passed House (53-41)	03-21-02	pp. 1600-1603

H0364-PH.124/jc