Bill Analysis

Jennifer Stump *Legislative Service Commission*
John Rau

Sub. H.B. 364*

124th General Assembly
(As Reported by S. Education)

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

COMMUNITY SCHOOLS

- Adds "academic watch" school districts to those districts in which start-up community schools may be located.
- Eliminates the authority of the State Board of Education to sponsor community schools and gives existing State Board-sponsored schools two years after the effective date of the bill to find new sponsors.
- 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.
- Exempts all existing sponsors on the bill's effective date from the requirement to be approved by the Department of Education for sponsorship.
- 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.

* *This analysis was prepared before the report of the Senate Education Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Limits to 225 the total number of start-up community schools that can operate statewide until July 1, 2005.

- Exempts school district-sponsored community schools located within their sponsoring districts from counting toward the cap.

- Permits all educational service centers to sponsor start-up community schools in specified counties (including the ESC serving Lucas County which can currently sponsor schools in Lucas County).

- Permits the boards of trustees of the 13 state universities or their designees to sponsor start-up community schools to serve as practical demonstrations of teaching methods, technology, or practices that are included in their teacher preparation programs.

- Permits federally tax-exempt entities that meet certain conditions to sponsor start-up community schools.

- Requires community schools established after the bill's effective date to be "public benefit corporations."

- Specifies contractual duties of community school sponsors.

- Permits the renewal of a community school contract for any length of time.

- 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 organization 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.

- Requires community schools to comply with certain school attendance laws, including those regarding truant students.

- Applies the third grade reading guarantee (and the current fourth grade reading guarantee effective until July 1, 2003) to community schools.

- Requires community schools to provide intervention services to students whose scores on diagnostic assessments show that they are unlikely to meet statewide academic standards.

- Directs community schools to adopt a policy governing the conduct of academic prevention/intervention services for students.

- Prohibits community school students from remaining in school for longer than 14 days without providing proof of immunization against certain communicable diseases.

- Requires community schools to train specified employees in child abuse prevention.

- Permits single-gender community schools.

- Permits the establishment of community schools for gifted students.

- Requires Internet community schools to establish a central base of operation at a physical location.

- Requires Internet community schools to use a filtering device or software to block Internet access to materials that are obscene or harmful to juveniles on all computers provided to students for instructional use.

- Requires Internet community schools to develop a plan for ensuring that teachers conduct face-to-face visits with their students.

- Permits Internet community schools to provide less than one computer per enrolled student residing in the same household at the request of the students' parent.

- Makes changes in the law regarding 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.

- Permits community schools to lease-purchase property.

- Creates the Community School Revolving Loan Fund.

- Requires academic performance data for conversion community schools to be included on the report cards issued for their sponsoring school districts.

- Clarifies that certain acts are criminal offenses and that certain crimes carry enhanced penalties when committed on community school property or at community school activities.

- Prohibits, generally, a community school or school district from offering a monetary or in-kind incentive to a student or a student's parent for enrollment.

- Makes other changes in the community school law.

- Requires the Legislative Office of Education Oversight (LOEO) to conduct a comparative study of funding systems for independent charter schools in Ohio and other states and to issue a report by January 31, 2004.

- Requires LOEO to conduct a study of the cost of educating students in Internet community schools and to report its findings by December 31, 2003.

OTHER EDUCATION LAW CHANGES

- Clarifies that the superintendent of a local school district may designate the superintendent of the ESC to which the district belongs as the person authorized to issue age and schooling certificates.

- Changes the calculation of Disadvantaged Pupil Impact Aid (DPIA) by using an annual count of students living in poverty and receiving public assistance rather than a five-year average as currently required.

- Shortens the deadline for correction of reporting errors to the Education Management Information System (EMIS) from 90 days to 45 days.

- Adds a representative from the Office of the Auditor of State to the Alternative Education Advisory Council beginning on the bill's effective date.

TABLE OF CONTENTS

COMMUNITY SCHOOL LAW

CONTENT AND OPERATION

COMMUNITY SCHOOL LAW

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 (the former Pilot Project Area), and any district declared to be in a state of academic emergency.[1]

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.

---

[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.*

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

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 adds "school districts in a state of academic watch" to the definition of "challenged school districts," in which start-up community schools may be located.[2] (See **COMMENT**.)

The bill also explicitly prohibits the establishment of a community school in two or more school districts under the same contract.[3]

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.[4] However, it also adds some new entities that can sponsor schools.

The bill, first, retains current law by specifying that school districts with territory in the same county as a challenged school district may sponsor start-up schools in the challenged district.

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 in a county within the territory of the ESC or in a county contiguous to such county as long as the school itself is located in a challenged school district.[5]

The bill further permits the board of trustees of any of the 13 state-assisted universities or a designee of the board to sponsor a start-up school if at least one of the contractually specified missions of the school is the practical demonstration of teaching methods, educational technology, or other teaching practices that are

---

[2] *R.C. 3314.02(A)(3). An "academic watch" school district is one that meets more than 5 but not more than 8 of 17 performance indicators adopted by the State Board of Education or the equivalent number of indicators if the State Board adopts more than 17 total indicators.*

[3] *R.C. 3314.02(F).*

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

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

included in the university's teacher preparation program.[6] The Department of Education is required to determine, using criteria adopted by rule, whether the mission specified in a school's contract satisfies this requirement. The determination of the Department in such matter is final.[7]

Finally, any federally tax-exempt entity may sponsor a start-up school as long as certain conditions are satisfied. First, the entity must have been in operation for at least five years prior to applying to be a community school sponsor. Second, it must have assets of at least $500,000. Third, the entity must be an "education-oriented entity" as determined solely by the Department of Education according to criteria adopted by rule of the Department.[8] Finally, until July 1, 2005, any such entity may sponsor only schools that are both in a challenged school district and were formerly sponsored by the State Board of Education. After that time, tax-exempt entities that meet all of the specified conditions may sponsor any new or existing school in any challenged school district.[9]

Exemption for tax-exempt entity succeeding a state university in the Pilot Project Area as a community school sponsor

The bill provides an exemption from the requirement that a tax-exempt entity be in existence for at least five years for any entity that succeeds the board of trustees of a state university located in the Pilot Project Area (Lucas County), or that board's designee, as the sponsor of a community school. The entity may sponsor a school formerly sponsored by that board of trustees, or its designee, for the remainder of the term of the school's contract and may renew the contract as provided for all schools under the bill. In addition, such entity also may enter into

---

[6] *R.C. 3314.02(C)(1)(e). The 13 state universities are University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University. As noted above, currently only the University of Toledo board of trustees or its designee may sponsor a start-up school and only if located in a Lucas County school district (the former Pilot Project Area).*

[7] *R.C. 3314.015(B)(2). The Department's criteria must be adopted no later than 90 days after the bill's effective date.*

[8] *The Department must adopt its criteria within 90 days after the bill's effective date.*

[9] *R.C. 3314.015(B)(3) and 3314.02(C)(1)(f).*

new contracts to sponsor additional community schools as long as it satisfies all of the other requirements of the Community School Law.[10]

Corporate organization of schools

Under current law, community schools must be established as nonprofit corporations under the state Nonprofit Corporation Law, codified in R.C. Chapter 1702. Under the bill, all schools established after the effective date of the bill must also be established as "public benefit corporations" under that same chapter of the Revised Code.[11] A "public benefit corporation" is a corporation that is either a tax exempt entity under Section 501(c)(3) of the Internal Revenue Code or "is organized for a public or charitable purpose and that upon dissolution must distribute its assets to another public benefit corporation, the United States, a state or any political subdivision of a state, or a [Section 501(c)(3) tax-exempt entity]." It specifically does not include a nonprofit corporation that is organized by one or more municipal corporations to further a public purpose that is not a charitable purpose.[12] All schools already established on the effective date of the bill are not subject to the new organization requirement.

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.[13] 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

---

[10] Section 12 of the bill. This provision applies to community schools currently sponsored by the University of Toledo Board of Trustees or its designee. The tax-exempt entity must be approved by the Department of Education for sponsorship and also must be determined to be an "education-oriented" entity by the Department before it can sponsor any existing or new schools. The entity is exempt only from the requirement that it be in existence for at least five years prior to applying to be a sponsor.

[11] R.C. 3314.03(A)(1).

*[12] R.C. 1702.01(P), not in the bill. Elsewhere the bill provides an order for the distribution of assets upon the closure of a school that protects the rights of certain creditors of such a school. (See "**Distribution of assets of a closed school**" below.)*

[13] Section 6 of the bill.

for providing technical assistance to proposing parties, sponsors, and schools in development and start-up activities.[14] 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 it 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.[15] 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.[16] 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. In addition, the Lucas County Educational Service Center may continue to sponsor existing schools without meeting the new geographical restrictions placed on ESCs under the bill and the University of Toledo Board of Trustees or its designee may also continue to sponsor existing schools without satisfying the mission requirement for sponsorship by state universities imposed by the bill. All current

---

[14] *R.C. 3314.015(A). Under current law, the State Office of School Options within the Department of Education provides advice and services for community schools and the Pilot Project Scholarship Program (the Cleveland voucher program). The bill eliminates the Office's responsibilities regarding community schools, which are transferred to the new State Office of Community Schools. (R.C. 3314.11 and 3314.111.)*

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

[16] *These rules must be adopted within 90 days after the bill's effective date. The bill directs the Department to consult with current sponsors in developing the rules. It also specifies that the rules may require sponsors to respond promptly to requests from the Department for information, data, and documents. (Section 7 of the bill.)*

sponsoring entities may also contract with new schools as long as they continue to comply with all other provisions of the community school law.[17]

The decision of the Department to disapprove an entity for sponsorship or to revoke such approval may be appealed under the Administrative Procedure Act.[18]

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 may revoke the entity's approval to be a school sponsor and may 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.[19]

Duties of a school sponsor

In order to sponsor a community school, the bill requires a sponsor to obtain the approval of the Department of Education and to 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.[20] A sponsor also must be located or have a representative located within 50 miles of the school location, or in the case of an Internet- or computer-based school, within 50 miles of the school's central base of operation. A representative of the sponsor must meet with the school's governing authority and review the school's financial records at least once every two months.[21]

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

---

[17] *Section 6 of the bill.*

[18] *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.*

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

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

[21] *R.C. 3314.023.*

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 the event the school falls into financial difficulties and closes before the end of a school year.[22]

Renewal of a contract

Generally, the term of a community school contract is five years. Although a contract may be renewed under current law, the bill elaborates upon the standards for renewal. The bill permits a sponsor, with the approval of the school's governing authority, to renew a contract upon its expiration 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, which must run through the end of a school year.[23]

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.[24]

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, or immediate relatives of owners or employees, of any for-profit firm that operates or manages a school for the governing authority. "Immediate relatives" under the bill are limited to spouses, children, parents, grandparents, siblings, and in-laws. The bill also 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 or operating a school under contract with a governing authority.[25]

---

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

[23] *R.C. 3314.03(A)(13) and (E) and 3314.07(A).*

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

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

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, as mentioned above, it restricts an individual from having an interest in a *for-profit firm* that has a contract with the governing authority for the operation or management of a school.[26]

Documentation requirements for management companies providing services to community schools

The bill requires each management company providing services to a community school amounting to more than 20% of the annual gross revenues of the school to 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.[27]

Fiscal officer qualifications

Each community school must have a fiscal officer under current law. The bill specifies that the individual who is so employed, prior to beginning his or her duties, must be a licensed school district treasurer or business manager or must complete at least 16 hours of continuing education classes in school accounting approved by the school's sponsor. If the fiscal officer is not a licensed school district treasurer or business manager, the individual must complete an additional 24 hours of approved continuing education coursework in school accounting within one year of the initial date of employment as fiscal officer.[28] Beginning with the second year of employment and each subsequent year thereafter, any such

---

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

[27] *R.C. 3314.024.*

[28] *Any coursework in school accounting in excess of 16 hours completed prior to employment counts toward the total of 40 hours required to be completed by the end of the first year of employment.*

fiscal officer must complete eight hours of continuing education in school accounting approved by the school's sponsor.[29]

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.[30]

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.[31]

Temporary limit on start-up community schools

The bill establishes a temporary limit on the total number of start-up community schools that can be in operation statewide. Until July 1, 2005, there can be only 225 such schools operating under contracts with sponsors. School district-sponsored community schools that are located within their sponsoring districts do not count toward the overall limit.[32]

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

---

[29] *R.C. 3314.011*

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

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

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

> 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.[33]

Limiting community schools targeted for "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 to just students identified as gifted students who satisfy the contractually defined description of "at risk."[34]

Elimination of exemptions for community schools from certain education laws

Community schools are exempt from many education laws applicable to other public schools. Some of the exemptions currently granted to community schools are eliminated by the bill.[35]

Third grade reading guarantee

A provision in continuing law commonly known as the "third grade reading guarantee" aims to ensure that students are reading at grade level by the end of third grade. (The third grade reading guarantee replaces the current fourth grade reading guarantee effective July 1, 2003, as the fourth grade reading proficiency

---

[33] *R.C. 3314.041.*

[34] *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."*

[35] *R.C. 3314.03(A)(11)(d).*

test is phased out in favor of the third grade reading achievement test.[36]) Under the reading guarantee provision, school districts must annually assess students at the end of first and second grade and provide them with intervention services if they are reading below grade level.[37]

Furthermore, third graders who do not attain a score in the *proficient* range on the third grade reading achievement test must receive intense remediation services and another opportunity to take the test in the summer following third grade. Third graders who score in the *below basic* range on the summer administration of the test are subject to one of the following three options selected at the discretion of the school district:

(1) Promotion to the fourth grade if the principal and reading teacher agree, based upon other evaluations of the student's reading skill, that the student is academically prepared for fourth grade work;

(2) Promotion to the fourth grade, but only with "intensive" intervention services in that grade;

(3) Retention in third grade.

For students who are promoted to fourth grade without attaining the proficient score on the third grade reading achievement test, there are several opportunities to retake the test. If a student still has not passed the test at the end of his or her fourth grade year, the district has the same options described above regarding the promotion or retention of that student.[38]

The bill applies all of these provisions regarding annual assessments of students' reading ability, intervention services, and options for promoting and retaining students to community schools.

---

[36] *Sections 3, 4, and 5 of Am. Sub. S.B. 1 of the 124th General Assembly. While in effect, the fourth grade reading guarantee operates in a manner similar to the third grade reading guarantee described here.*

[37] *Currently, districts may use locally selected assessments. Whenever the State Board adopts reading diagnostic assessments for first and second grades, however, districts must begin using those tests to determine students' reading levels (see "**Diagnostic assessments**" below).*

[38] *R.C. 3313.608, not in the bill.*

Diagnostic assessments

Continuing law requires the State Board of Education to adopt a diagnostic assessment for each of grades kindergarten through two in reading, writing, and math and grades three through eight in those subjects as well as science and social studies. These diagnostic assessments must be aligned with statewide academic standards and be designed to measure student comprehension and mastery of the content of the standards. The deadline for adoption is July 1, 2007. Under continuing law, both school districts and community schools must administer and score the diagnostic assessments at least once annually beginning the first school year after their adoption. At present no diagnostic assessments have been adopted.[39]

Other requirements related to the diagnostic assessments currently apply only to school districts. First, districts, but not community schools, must provide intervention services to students whose diagnostic assessments show that they are not making satisfactory progress toward the attainment of the academic standards for their grade level. Second, districts must administer the appropriate diagnostic assessment to transfer students within 30 days after the date of transfer.[40] The bill applies both of these requirements to community schools.

Policy on prevention/intervention services

Under continuing law, each school district must adopt a policy governing the conduct of "academic prevention/intervention services" for all grades and school buildings served by the district. Districts must update their policies annually. Each district's policy must cover the services offered by the district to students who fail to attain at least a proficient score on a fourth, sixth, or ninth grade proficiency test (until such tests are phased out) or who fail to attain at least a basic score on a third, fourth, fifth, seventh, or eighth grade achievement test or who perform poorly on a diagnostic assessment.

With respect to the provision of prevention/intervention services based on the results of diagnostic assessments, the policy must include all of the following:

(1) Procedures for using the diagnostic assessments to measure student progress toward the attainment of academic standards and to identify students who may not attain the academic standards;

---

[39] *According to the Department of Education, it is in the process of reviewing the development of the diagnostic assessments in the context of the new federal testing provisions outlined in the No Child Left Behind Act (20 U.S.C. 6301 et seq.).*

[40] *R.C. 3301.079(D) and 3301.0715, neither section in the bill.*

(2) A plan for the design of classroom-based intervention services to meet the instructional needs of individual students;

(3) Procedures for the regular collection of student performance data;

(4) Procedures for using student performance data to evaluate the effectiveness of intervention services and, if necessary, to modify such services.[41]

Under the bill, the law requiring school district "academic prevention/intervention services" policies is made applicable to community schools.

Student immunizations

Continuing law prohibits a student from remaining in school for more than 14 days, beginning from the time of initial entry or the start of each school year, without providing written evidence to the admissions officer that the student has been immunized (or is in the process of being immunized) in a manner approved by the Department of Health against various communicable diseases. Immunizations against mumps, poliomyelitis, diphtheria, pertussis, tetanus, rubeola, and rubella are mandatory for all students. Kindergartners must also be immunized against hepatitis B. Exemptions from immunization are granted if (1) a student has already had a natural form of a specific disease, (2) a student's parent or guardian objects in writing to the immunization for good cause, including religious convictions, or (3) a student's physician certifies in writing that a specific immunization is medically contraindicated.[42]

Under continuing law, both school districts and community schools must keep immunization records for their students that trace the history of immunizations against the diseases listed above.[43] Only school districts, however, must abide by the 14-day limit for presentation of proof of immunization and the statutory exemptions from immunization. The bill extends these requirements to community schools as well.

Training in child abuse prevention

School districts and educational service centers (ESCs), under continuing law, must develop in-service training programs in child abuse prevention for their

[41] *R.C. 3313.6012, not in the bill.*

[42] *R.C. 3313.671, not in the bill.*

[43] *R.C. 3313.67 (not in the bill) and 3314.03(A)(11)(d).*

employees who work as teachers, administrators, nurses, counselors, or school psychologists in elementary schools. All such employees must complete at least four hours of in-service training in child abuse prevention within three years of commencing employment. Districts and ESCs must consult with public or private agencies or individuals involved in child abuse prevention or intervention in developing their training programs.[44]

The bill requires community schools that serve elementary grades to provide training programs in child abuse prevention to the same employees and in the same manner as school districts and ESCs.[45]

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.

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.[46] 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.

The bill also specifies that the contract between the school's governing authority and sponsor must include provisions that recognize both:

(1) The authority of public health and safety officials to inspect the facilities of the school and to order the facilities closed if those officials find that

---

[44] *R.C. 3319.073, not in the bill.*

[45] *Employees of all schools, including community schools, are required by continuing law to report instances of confirmed or suspected child abuse to the proper authorities (R.C. 2151.421, not in the bill).*

[46] *R.C. 3314.072.*

the facilities are not in compliance with health and safety laws and regulations; and

(2) The authority of the Department to suspend the operation of the school if the Department has evidence of conditions or violations of law at the school that pose an imminent danger to the health and safety of the school's students and employees.[47]

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.[48]

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 the retirement funds of employees of the school, employees of the school, and private creditors who are owed compensation. Any remaining funds are to be paid to the state general revenue fund. If the assets of the school are insufficient to pay all valid claims, the bill specifies that the prioritization of the distribution of assets within each class of payees maybe determined by court order in accordance with Nonprofit Corporation Law.

The bill also provides that if the school has received computer hardware or software from the Ohio SchoolNet Commission, that hardware or software must be returned to the Commission. In turn, the Commission must redistribute the hardware and software, to the extent possible, to school districts in conformance with the provisions of the programs operated and administered by the Commission.[49]

---

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

[48] *R.C. 3314.073.*

[49] *For example, under the SchoolNet Plus program, the Commission is required to provide "interactive computer workstations" to school districts at a ratio of one workstation for every five students in grades kindergarten through six. Under that*

Finally, the bill specifies that its provisions regarding the distribution of assets apply only to the extent permitted under the state Nonprofit Corporation Law, which might in some cases require other distribution priorities.[50] Still, under that law, a corporation is required to use its assets for the payment of its obligations and only then must distribute the remainder of its assets in a prescribed manner.[51]

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 instruction and facilities and to offer students and parents . . . the option of a single-gender education."[52]

Internet community schools

Internet or computer-based community schools, sometimes called electronic schools or e-schools, are defined by the bill as community schools in which students "work primarily from their residences on assignments provided via an Internet- or other computer-based instructional method that does not rely on regular classroom instruction."[53] Under the bill, conversion schools cannot be

---

program, the Commission is permitted to provide such workstations to community schools if adequate funds are available.

[50] *R.C. 3314.074. See also R.C. Chapter 1702., not in the bill.*

[51] *R.C. 1702.49(D)(2), not in the bill, specifies that in the case of a "public benefit corporation," in which manner all new community schools must be established, after paying off its obligations upon dissolution must distribute its assets as follows: (a) assets held by it in trust for specified purposes must be applied so far as is feasible in accordance with the terms of the trust, (b) the remaining assets not held in trust must be applied so far as is feasible towards carrying out the purposes stated in the corporation's articles, (c) in the event and to the extent that, in the judgment of the directors, it is not feasible to apply the assets as provided in clauses (a) and (b), the assets must be applied as may be directed by the appropriate court of common pleas or another court of competent jurisdiction.*

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

[53] *R.C. 3314.02(A)(7).*

Internet schools.[54] Therefore, if a school district wishes to sponsor an Internet school, it must establish the school as a new start-up school rather than converting an existing school into an Internet community school. All Internet community schools must establish a central base of operation at a physical location.[55]

Generally, all statutes and administrative rules that apply to community schools as a whole also apply to Internet schools, even though such schools have a different method of delivering educational services.[56] However, the bill adds three statutory stipulations that apply solely to Internet schools. The first two stipulations must be specified in the contract between an Internet school's sponsor and the school's governing authority.[57]

First, Internet schools must use a hardware filtering device or install filtering software on each computer they provide to students for instructional use. This device or software must block Internet access to materials that are considered obscene or harmful to juveniles, including those that are sexually explicit or excessively violent, contain foul language, glamorize criminal activity, or are otherwise deemed unsuitable for juveniles.[58] For students who use a computer at home obtained from a source other than the school (a personal computer paid for by a parent, for example), the Internet school must make such device or software available to the students at no charge so that the students may use or install it on their computers.[59]

---

[54] *R.C. 3314.02(B).*

[55] *R.C. 3314.031(C)(3).*

[56] *Due to the unique circumstances of Internet schools, however, the bill exempts such schools from certain provisions in current law regarding school facilities. A student's home could possibly be construed to be a "facility" for an Internet school, making it difficult for Internet schools to satisfy some of the legal requirements that traditional brick-and-mortar schools must meet. Specifically, under the bill, Internet schools are not subject to the prohibitions in current law against community schools serving students in multiple buildings unless limitations on space make it necessary or against serving the same grades in different facilities. Internet schools also do not need to comply under the bill with the requirement that community school facilities meet all health and safety standards for school buildings. (R.C. 3314.05.)*

[57] *R.C. 3314.031.*

[58] *The legal definitions of "obscene" and "harmful to juveniles" are located in R.C. 2907.01(E) and (F), not in the bill.*

[59] *The bill specifies that a student is not considered enrolled in an Internet school until the student possesses or has been provided with all necessary computer hardware and*

Second, Internet schools must develop a plan to fulfill the intent of the General Assembly stated in the bill that teachers at Internet schools conduct face-to-face visits with their students throughout the school year. Each school's plan must indicate the number of times teachers will visit each student enrolled in the school during the course of the school year as well as the manner in which those visits will be conducted (for example, in the student's home, at a central location, or on a field trip with other students).

Entitlement to one computer per enrolled child in an Internet community school

The bill provides that each child enrolled in an Internet- or computer-based community school is entitled to a computer supplied by the school. It also provides that if more than one child living in a single household is enrolled in the school, at the option of the parent of those children, the school may supply less than one computer per child, as long as at least one computer is supplied to the household. The parent may amend the decision to accept less than one computer per enrolled child anytime during the school year. In such case, the school must within 30 days of the parent's notice provide any additional computers requested by the parent, up to one computer for each child enrolled in the school.[60]

In addition, the bill requires each Internet- or computer-based community school to provide to each parent who is considering enrolling a child in the school and to the parent of each child already enrolled in the school a written notice of the provisions described above.[61]

Finally, the bill specifies that if a school fails to provide a student with a computer in the manner described (either on a one-computer-per-student basis or

---

software materials and all materials are fully operational. Therefore, the school could not receive any state funds for that student until the student has been equipped with the tools to participate in the school's educational services. Current law requires the Department of Education to reduce an Internet school's basic aid payments if such hardware and software are not delivered, installed, and activated in a timely manner. (R.C. 3314.08(N).) Presumably, a filtering device or software would be part of the school's required package of hardware and software under the bill and a school's failure to provide it to a student would trigger the financial consequences described above.

[60] *R.C. 3314.032(A).*

[61] *R.C. 3314.032(B).*

upon request of a parent), the school may not count that student as "enrolled" for purposes of receiving state moneys for that student.[62]

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.[63] 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

---

[62] *R.C. 3314.08(N).*

[63] *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.[64]

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."[65]

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.[66]

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.[67]

---

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

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

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

[67] *R.C. 3314.13. There is a reference to reporting of students under division (B)(3) of R.C. 3314.08. 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."[68] 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.[69]

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

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

[69] *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.[70]

Counting of certain vocational students in the ADMs of community schools and joint vocational school districts

Under continuing law, for state funding purposes, any student who is enrolled in a vocational course at a joint vocational school district (JVSD) that includes the territory of the student's resident school district is counted in the formula ADM of the JVSD for the full-time equivalent (FTE) of the time that the student is to attend that course. In addition, the student is counted in his or her resident district's formula ADM for an *additional* one-quarter of FTE of the time that the student is to attend the course.[71] In other words, in such a situation, the JVSD may count up to 1 FTE for the student and the student's resident school district may count up to 1/4 FTE for the same student. Under the bill, if a student is enrolled in a community school but also is enrolled in a JVSD that includes the territory of the student's resident district under a contract with the community school, the community school may count up to 1/4 FTE for that student. The JVSD in which the student is enrolled may count up to 1 FTE for the student.[72]

General Assembly's intent on the use of state moneys to pay taxes

The bill states that it is the intent of the General Assembly that no state moneys paid to a community school for per-pupil funding be used by the school to pay any taxes the school might owe on its own behalf, including but not limited to, local, state, and federal income taxes, sales taxes, and personal and real property taxes. This intent language specifically does not apply to any moneys withheld

---

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

[71] *For purposes of this analysis, a student's "resident school district" is the district in which the student is entitled to attend school tuition-free under R.C. 3313.64 or 3313.65 (neither section in the bill). Generally, a student may attend school free of tuition in the district in which the student's parent resides or in some cases in the district in which the student resides.*

[72] *The 1/4 FTE for a student enrolled in a community school but also enrolled under contract at a JVSD that includes the territory of the student's resident district is first counted in the resident school district's formula ADM and in the community school's ADM. The 1/4 FTE is credited to the school district and is then deducted from the school district and finally credited to the community school in the usual manner for calculating and paying state funds to community schools. (R.C. 3314.08(B)(2)(e), (C)(1), and (D)(1) and 3317.03(A)(3) and (D)(1).)*

from an employee of a community school that are payable by the school to a government entity as taxes on behalf of the employee. The bill does not specify any consequence in the case of a community school that uses its state moneys to pay any taxes the school owes.[73]

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 cumulative 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.[74]

Compliance with various school attendance provisions

The School Attendance Law, as codified in R.C. Chapter 3321., provides that a child residing in this state between the ages of 6 and 18 is of "compulsory school age" and must attend school.[75] While it is a parent's duty to ensure that a child of compulsory school age is educated in accordance with law, school districts also have various responsibilities under the School Attendance Law.[76] Current law largely exempts community school officials from adhering to the School Attendance Laws.[77] The bill, however, requires community schools to follow many of the same school attendance provisions as school districts.[78]

One such provision requires that when a child withdraws from school, the child's teacher must determine why the child withdrew.[79] In the case of a student

---

[73] *R.C. 3314.082.*

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

[75] *R.C. 3321.01, not in the bill.*

[76] *R.C. 3321.03 and 3321.04, neither section in the bill.*

[77] *Under current law, the only School Attendance Law with which a community school must comply appears to be R.C. 3321.01 which, among other aspects, specifies the conditions under which a child may be admitted to kindergarten or first grade.*

[78] *R.C. 3314.03(A)(11)(d).*

[79] *R.C. 3321.13, not in the bill.*

who withdraws because of a change in address, it is then the responsibility of the school district superintendent to forward the child's pertinent school records to the superintendent of the child's new residential school district. In the case of a community school, presumably the role of a district superintendent would be carried out by the governing authority.

However, if the student withdraws for a reason other than a change of address and is not attending school elsewhere or if a student is removed from school because of an incident involving a weapon, the superintendent (governing authority, presumably) is responsible for notifying the Registrar of Motor Vehicles and the juvenile judge of the county in which the school is located.[80] Additionally, a school may develop a policy allowing notification to the Registrar of Motor Vehicles and the applicable juvenile judge in other instances when a student is absent without a legitimate excuse, expelled, or suspended from school.

The bill also requires a community school to employ an attendance officer.[81] This attendance officer has police powers to investigate and enforce the compulsory education laws and the laws applicable to the employment of minors.[82] Like the attendance officer of a school district, the attendance officer of a community school is also responsible for instituting legal action against a parent, guardian, or other person who violates the compulsory education or employment of minors laws. The attendance officer is also responsible for keeping records pertaining to the officer's transactions and cooperating with the Director of Commerce in enforcing laws relating to the employment of minors.[83]

Finally, the bill requires community schools to treat "habitual" and "chronic" truants in the same manner as school districts.[84] Like school districts,

---

[80] *Within ten days of such a notification, the Registrar of Motor Vehicles is required to suspend a student's driver's license or temporary license. The student, then, has the right to petition an applicable juvenile judge for reinstatement. (R.C. 4507.061, not in the bill.)*

[81] *R.C. 3321.14, not in the bill. Based on Attorney General interpretations of R.C. 3321.14 (and R.C. 3321.15 which is applicable to educational service centers), a community school could appoint an employee with another job function as the attendance officer, provided both positions could be performed by one person.*

[82] *R.C. 3321.17, not in the bill.*

[83] *R.C. 3321.18, not in the bill.*

[84] *A "habitual truant" is defined as a child of compulsory school age who is absent from school without a legitimate excuse for five or more consecutive days, seven or more days in a school month, or 12 or more school days in a year (R.C. 2151.011, not in the bill). A*

community schools must adopt an intervention policy addressing habitual truants that is developed in consultation with the applicable juvenile court judge, parents, and pertinent state and local agencies.[85] Additionally, the bill requires the attendance officer of a community school to investigate a truant student, warn the student of the legal consequences of truancy, notify the parents, and order the parents to cause the child's school attendance.

If the student is a habitual truant, the school must take either or both of the following actions: (1) follow an intervention strategy contained in the mandatory intervention policy or (2) file a complaint in the juvenile court for the county in which the school is located alleging that the child is either "unruly" or "delinquent" and that the child's parent has failed to cause the child's school attendance. If the student is a chronic truant, the school must file a complaint alleging the child is delinquent and that the parent has failed to send the child to school. Furthermore, a school can require a parent to attend a parental involvement program if the parent's child is truant.[86]

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. However, the bill explicitly states that, with the exception of the amounts of loan guarantees issued under the Classroom Facilities Loan Guarantee Program, the State of Ohio is not liable for debts incurred by the community schools.[87]

"chronic truant" is defined as a child of compulsory school age who is absent from school without a legitimate excuse for seven or more consecutive days, ten or more days in a school month, or 15 or more school days in a year (R.C. 2152.02, not in the bill).

[85] *R.C. 3321.191, not in the bill. While this section specifies that an intervention policy must contain the possibility of sending a truant student to an alternative school established under R.C. 3313.533, it is unclear how this provision would apply to community schools.*

[86] *R.C. 3321.19, not in the bill.*

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

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.[88]

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.[89] 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.[90] 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.

---

[88] *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.*

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

[90] *R.C. 3314.011 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.*

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.[91]

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.[92]

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.[93] 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

---

[91] *R.C. 3301.0714(N).*

[92] *R.C. 3314.022.*

[93] *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.*

each transported student who lives more than *one* mile from the school.[94] 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.

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 "***Payment in lieu of transportation***," below). 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.[95]

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

---

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

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

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 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.[96]

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.

[96] *R.C. 3314.091.*

In general, the bill codifies the current practice of the Department of Education concerning payment in lieu of transportation.[97] Under continuing law, a school district may decide that it is impractical to transport a public school pupil, nonpublic school pupil, or a student attending a community school and offer payment in lieu of transportation.[98]

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

---

[97] *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.*

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

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:

(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.[99]

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.[100]

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.[101]

---

[99] *R.C. 3327.02.*

[100] *R.C. 3327.02.*

[101] *R.C. 3327.02.*

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 of transportation as determined by the State Board for the previous year.[102] The school district board must make payments on a schedule ordered by the Department.[103]

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.[104]

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.[105]

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

---

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

[103] *R.C. 3327.02.*

[104] *R.C. 3327.02.*

[105] *R.C. 3327.02.*

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.[106]

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.[107]

Currently, that program applies only to start-up schools. The bill permits conversion community schools to also apply for loan guarantees under the program.[108]

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."[109]

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

---

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

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

[108] *R.C. 3318.50(A) and (B).*

[109] *R.C. 3318.50(A). 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."*

construction of facilities, but the bill specifically permits the guaranteed loans to be used for new construction.

Finally, 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.[110]

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.[111]

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, but over the life of the school's contract term it may receive a maximum of $250,000. The revolving loan fund consists solely of federal moneys allocated for the development and operation of community schools.[112]

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.[113]

---

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

[111] *R.C. 3313.375.*

[112] *R.C. 3314.30.*

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

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.[114]

Under the bill, the Office of Budget and Management and the Department of Education are charged with jointly monitoring the adequacy of moneys in the loan fund. The agencies must report annually to the General Assembly regarding the sufficiency of fund moneys and, if necessary, recommend changes in the interest rate charged on loans or in default recovery procedures.[115]

Inclusion of conversion school data on district report card

For a school district that sponsors a conversion community school, the bill requires that academic performance data for students enrolled in the conversion school be included in the calculation of the performance of the district as a whole for the purpose of the annual report cards issued for the district.[116] Under continuing law, district report cards must contain disaggregated student performance data broken down by various categories such as race, gender, and student mobility. The bill requires that performance data also be disaggregated according to students' enrollment in a conversion school.[117]

Applicability of "school safety zone" to community schools

Continuing law designates certain acts as criminal offenses and applies enhanced penalties to certain other crimes when they are committed in a "school

---

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

[115] *R.C. 3314.30(H).*

[116] *All community schools that have been open for at least two full school years receive annual report cards detailing their academic and fiscal performance (R.C. 3314.012, not in the bill). Conversion community schools, therefore, would receive their own report cards besides being included in calculating their sponsoring district's performance. However, while the conversion school's own report card would not be issued until its third year of existence, the inclusion of the conversion school's data with the sponsoring district's would begin under the bill the first year the school is operational.*

[117] *R.C. 3302.03(D).*

safety zone."[118] As defined in the Criminal Code, a school safety zone consists of all of the following: (1) a school building, (2) the property on which the school is located and any other property owned or leased by the school or its governing board on which instruction, extracurricular activities, or training is conducted, (3) activities held under the auspices of the school or its governing board, and (4) school buses. Thus, for example, disorderly conduct is typically a minor misdemeanor, but if a person is convicted of disorderly conduct while at a school athletic event, then the offense is a fourth degree misdemeanor.

Under current law, the definition of school safety zone appears to encompass only schools operated by a board of education and private schools. The bill expands the definition of school safety zone specifically to include community schools. Therefore, any offense that carries enhanced penalties when committed in a school safety zone under current law would carry the same penalties when committed on community school property, at a community school activity, or on a school bus transporting community school students.[119]

Prohibition against monetary incentives for school enrollment

The bill prohibits the governing authority of a community school or the board of education of any city, exempted village, or local school district from offering a monetary or in-kind incentive to a student or a student's parents for

---

[118] *Crimes that carry enhanced penalties when committed in a school safety zone include drug trafficking (R.C. 2925.03), corrupting another with drugs (R.C. 2925.02), trafficking in counterfeit controlled substances (R.C. 2925.37), illegal manufacture of methamphetamine (R.C. 2925.04), illegal dispensing of drug samples (R.C. 2925.36), disorderly conduct (R.C. 2917.11), assault on certain school employees (R.C. 2903.13), stalking (R.C. 2903.211), arson (R.C. 2909.03), and inducing panic (R.C. 2917.31). Acts that are specific crimes when committed in a school safety zone include improperly discharging a firearm (R.C. 2923.161) and possession of a deadly weapon or dangerous ordnance (R.C. 2923.122).*

Continuing law also requires courts to add two years to the prison term of an offender convicted of a felony offense of violence when that offense was committed in a school safety zone (R.C. 2929.14(J)). In addition, it is a crime for an administrator, employee, or faculty member of a school, including a community school under the bill, to recklessly permit hazing (R.C. 2903.31). (None of the sections cited are in the bill.)

[119] *R.C. 2901.01 and 2925.01 and Sections 8, 9, and 10 of the bill. The definitional change in the bill also makes it mandatory for a community school principal (along with the principals of other public and private schools as under current law) to be notified when a registered sexual predator or habitual sex offender has enrolled in the school or moves into the geographical area of the school (R.C. 2950.11, not in the bill).*

enrollment at a particular community school or a school operated by the applicable school district. There is an exception to this prohibition, however. A community school or a school district is permitted to provide a student with any books, supplies, equipment, or other goods that are necessary for the student's education.[120] Presumably, a community school or school district could also provide a student or the student's parents with a monetary payment to cover such expenses.

LOEO studies

The bill requires the Legislative Office of Education Oversight (LOEO) to conduct two studies. The first is 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, 2004.[121]

LOEO also must conduct a study of the cost of educating students in Internet community schools and issue its findings in a written report to the General Assembly by December 31, 2003.[122]

CHANGES TO EDUCATION LAWS OTHER THAN COMMUNITY SCHOOL LAW

Issuing age and schooling certificates

Under the state minor labor law, an employer generally must require that an employee who is under 18 years of age and has not received a high school diploma or its equivalent present an age and schooling certificate before hiring that employee.[123] These certificates are issued by the superintendent of the school district in which the student resides or the chief administrative officer of the nonpublic school or community school that the student attends, provided the student satisfies several requirements such as proof the student is at least 14 years of age and has passed a physical exam.

Current law permits a superintendent or a chief administrative officer to choose a designee to issue age and schooling certificates. The bill expands this

---

[120] *R.C. 3313.648 and 3314.03(A)(11)(d).*

[121] *Section 5 of the bill.*

[122] *Section 11 of the bill.*

[123] *R.C. Chapter 4109., not in the bill.*

provision by explicitly allowing the superintendent of a local school district to designate the superintendent of the educational service center (ESC) to which the school district belongs as the person authorized to issue age and schooling certificates for that local district.[124]

Change to the calculation of Disadvantaged Pupil Impact Aid (DPIA)

Under the current school funding system, some school districts receive additional state money, Disadvantaged Pupil Impact Aid (DPIA), because the proportion of low-income students who receive public assistance in the district is a certain percentage of the statewide proportion. Generally, this money is used for statutory purposes such as safety and remediation and all-day kindergarten.

A school district's eligibility for DPIA depends on the district's DPIA index, which measures the district's proportion of children receiving public assistance relative to the statewide proportion of children receiving public assistance. One of the elements used in current law to calculate the DPIA index for fiscal year 2004 and the years following is the five-year average of the unduplicated number of children ages five to 17 who live in a family with income below the federal poverty guidelines and who receive family assistance from the Ohio Works First program, the food stamp program, the medical assistance program, the children's health insurance program (CHIP), or the disability assistance program.[125] The Department of Job and Family Services is required to

---

[124] R.C. 3331.01. Under prior law, the superintendent of an ESC was responsible for issuing age and schooling certificates for students enrolled in member local school districts. Am. Sub. H.B. 402 of the 124th General Assembly (effective August 28, 2002) transferred this authority from the ESC superintendent to the superintendent of the student's local school district (or the superintendent's designee). Presumably, by explicitly authorizing a superintendent of a local school district to designate the applicable ESC superintendent as the person responsible for issuing age and schooling certificates, the bill seeks to resolve any confusion over whether an ESC superintendent has authority to issue age and schooling certificates.

[125] Until fiscal year 2004, the DPIA index is based only on the number of children from families receiving assistance through the Ohio Works First program. However, because of changes in federal law, the number of families receiving assistance through this program has declined. Consequently, Am. Sub. H.B. 94 of the 124th General Assembly added additional programs to the calculation upon the recommendation of the Legislative Office of Education Oversight's report "A New Poverty Indicator for Disadvantaged Pupil Impact Aid (DPIA)," the issuance of which report was required by Am. Sub. H.B. 650 of the 122nd General Assembly.

annually report the number of students in each school district receiving such assistance in the preceding October to the State Board of Education by March 1.[126]

The bill modifies this element for DPIA calculations for fiscal year 2004 and subsequent years by eliminating the five-year average component of the calculation. Thus, the DPIA calculation, as modified by the bill, uses the unduplicated number of children ages five to 17 who live in a family with income below the federal poverty guidelines and who receive family assistance from the Ohio Works First program, the food stamp program, the medical assistance program, CHIP, or the disability assistance program as annually reported by the Department of Job and Family Services.[127]

Deadline for correction of reporting errors to EMIS

If the Department of Education determines that a school district missed a deadline for the reporting of data to EMIS or the correction of such data or did not make a good faith effort to report required data, the Department must file a report on the matter with the district superintendent. This report must contain recommendations for correcting the problem. In addition, the Department must withhold an increasing portion of state funds from the district each time a report is filed in the same fiscal year. The district can reclaim the funds only if it takes action to correct its reporting errors. Under current law, the district must take corrective action within 90 days of the date of the filing of the report or forfeit the funds permanently. The bill shortens this deadline to 45 days.[128]

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

---

[126] *R.C. 3317.10, not in the bill.*

[127] *R.C. 3317.029 and Sections 3 and 4 of the bill. Presumably the calculation for fiscal year 2004 will be made based on data from October 2002 and reported by March 1, 2003.*

[128] *R.C. 3301.0714(L).*

Office of the Attorney General. The bill adds a representative from the Office of the Auditor of State to the Council beginning on the bill's effective date.[129]

COMMENT

The requirement that a start-up community school be established only in a "challenged school district" is primarily a restriction on where the school can be physically located rather than on what population of students the school can serve. Presumably, a large proportion of a start-up community school's enrollment would be drawn from those students who would otherwise be entitled to attend school in the surrounding district where the school is located. Continuing law, however, does not prohibit a start-up community school from enrolling students outside of the district in which it is located. It is possible, for example, for a student from an excellent school district to enroll in a community school located in a challenged school district.

In the case of Internet- or computer-based community schools, it is less clear where the school is actually "located" for the purpose of complying with the requirement to be in a challenged school district. Presumably, the "central base of operation," which the bill requires Internet schools to establish, would have to be located in a challenged school district. Under continuing law, though, Internet community schools, like brick-and-mortar community schools, may enroll students who do not reside in or are not otherwise entitled to attend school in a challenged school district.

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
Reported, S. Education	---	---

h0364-rs.124/kl

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