

As Reported by the Senate Education Committee

133rd General Assembly

Regular Session

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Sub. H. B. No. 409

Representative Koehler

**Cosponsors: Representatives Jones, Cupp, Patterson, Carruthers, Galonski,
Ghanbari, Ginter, Scherer**

Senators Brenner, Fedor

A BILL

To amend section 3326.11 and to enact sections 1
3314.261 and 3321.192 of the Revised Code 2
regarding student attendance at school district 3
or STEM school remote learning programs and at 4
internet- or computer-based community schools 5
that are not dropout prevention and recovery 6
schools, to provide public and chartered 7
nonpublic schools discretion regarding 8
educational requirements of substitute teachers 9
for the 2020-2021 school year, to exempt schools 10
from retaining students under the Third Grade 11
Reading Guarantee for the 2020-2021 school year, 12
to permit the Superintendent of Public 13
Instruction to adjust various deadlines, to 14
prohibit the Department of Education from 15
issuing state report card ratings for the 2020- 16
2021 school year, to establish a safe harbor 17
from penalties and sanctions based on the 18
absence of state report card ratings and 19
community school sponsor ratings for the 2020- 20
2021 school year, and to declare an emergency. 21

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3326.11 be amended and sections 22
3314.261 and 3321.192 of the Revised Code be enacted to read as 23
follows: 24

Sec. 3314.261. This section shall not apply to an 25
internet- or computer-based community school in which a majority 26
of the students are enrolled in a dropout prevention and 27
recovery program. 28

(A) For purposes of this section, "instructional 29
activities" means the following classroom-based or nonclassroom- 30
based activities that a student is expected to complete, 31
participate in, or attend during any given school day: 32

(1) Online logins to curriculum or programs; 33

(2) Offline activities; 34

(3) Completed assignments within a particular program, 35
curriculum, or class; 36

(4) Testing; 37

(5) Face-to-face communications or meetings with school 38
staff or service providers; 39

(6) Telephone or video conferences with school staff or 40
service providers; 41

(7) Other documented communication with school staff or 42
service providers related to school curriculum or programs. 43

(B) (1) Each internet- or computer-based community school's 44
attendance policy adopted in accordance with sections 3314.03 45

and 3321.191 of the Revised Code shall specify that a student is 46
considered in attendance at the school when the student 47
satisfies either of the following conditions: 48

(a) The student participates in at least ninety per cent 49
of the hours of instructional activities offered by the school 50
in that school year; 51

(b) The student is on pace for on-time completion of any 52
course in which the student is enrolled. The school's attendance 53
policy shall define "on pace for on-time completion" for 54
purposes of division (B)(1)(b) of this section. 55

(2) If a student is not considered in attendance under 56
division (B)(1) of this section, the student shall be considered 57
absent for those hours of instructional activities offered by 58
the school in that school year in which the student does not 59
participate. 60

(3) In the event that a student has thirty or more hours 61
of unexcused absences in any semester, the internet- or 62
computer-based community school in which the student is enrolled 63
shall submit a written report to the student's parent, guardian, 64
or custodian. 65

(C)(1) The procedures set forth in this section address 66
only the calculation of unexcused absences. Using the method for 67
calculation prescribed by this section an internet- or computer- 68
based community school to which this section applies shall 69
determine whether a student's absences trigger one or more 70
absence intervention requirements and carry those out in the 71
manner prescribed by section 3321.191 of the Revised Code. 72

(2) Nothing in this section shall be construed to affect 73
the procedure for automatically withdrawing a student from 74

school that must be adopted as part of a school's attendance 75
policy in accordance with division (A) (6) (b) of section 3314.03 76
of the Revised Code. 77

Sec. 3321.192. This section applies to any school that is 78
operated by a school district and in which the enrolled students 79
work primarily on assignments provided via an internet- or other 80
computer-based instructional method. 81

(A) For purposes of this section, "instructional 82
activities" means the following classroom-based or nonclassroom- 83
based activities that a student is expected to complete, 84
participate in, or attend during any given school day: 85

(1) Online logins to curriculum or programs; 86

(2) Offline activities; 87

(3) Completed assignments within a particular program, 88
curriculum, or class; 89

(4) Testing; 90

(5) Face-to-face communications or meetings with school 91
staff or service providers; 92

(6) Telephone or video conferences with school staff or 93
service providers; 94

(7) Other documented communication with school staff or 95
service providers related to school curriculum or programs. 96

(B) (1) Each school's attendance policy adopted in 97
accordance with division (A) of section 3321.191 of the Revised 98
Code shall specify that a student who works primarily via 99
internet or other computer-based instructional method is 100
considered in attendance at the school when the student 101

satisfies either of the following conditions: 102

(a) The student participates in at least ninety per cent 103
of the hours of instructional activities offered by the school 104
in that school year. 105

(b) The student is on pace for on-time completion of any 106
course in which the student is enrolled. The school's attendance 107
policy shall define "on pace for on-time completion" for 108
purposes of division (B)(1)(b) of this section. 109

(2) If a student is not considered in attendance under 110
division (B)(1) of this section, the student shall be considered 111
absent for those hours of instructional activities offered by 112
the school in that school year in which the student does not 113
participate. 114

(C) The procedures set forth in this section address only 115
the calculation of unexcused absences of students who work 116
primarily via internet or other computer-based instructional 117
method. Using the method for calculation prescribed by this 118
section, a school district shall determine whether a student's 119
absences trigger one or more absence intervention requirements 120
and carry those out in the manner prescribed by section 3321.191 121
of the Revised Code. 122

Sec. 3326.11. Each science, technology, engineering, and 123
mathematics school established under this chapter and its 124
governing body shall comply with sections 9.90, 9.91, 109.65, 125
121.22, 149.43, 2151.357, 2151.421, 2313.19, 2921.42, 2921.43, 126
3301.0714, 3301.0715, 3301.0729, 3301.948, 3313.14, 3313.15, 127
3313.16, 3313.18, 3313.201, 3313.26, 3313.472, 3313.48, 128
3313.481, 3313.482, 3313.50, 3313.536, 3313.539, 3313.5310, 129
3313.608, 3313.6012, 3313.6013, 3313.6014, 3313.6015, 3313.6020, 130

3313.6021, 3313.6024, 3313.61, 3313.611, 3313.614, 3313.615, 131
3313.617, 3313.618, 3313.6114, 3313.643, 3313.648, 3313.6411, 132
3313.66, 3313.661, 3313.662, 3313.666, 3313.667, 3313.668, 133
3313.67, 3313.671, 3313.672, 3313.673, 3313.69, 3313.71, 134
3313.716, 3313.718, 3313.719, 3313.7112, 3313.721, 3313.80, 135
3313.801, 3313.814, 3313.816, 3313.817, 3313.818, 3313.86, 136
3313.89, 3313.96, 3319.073, 3319.21, 3319.32, 3319.321, 3319.35, 137
3319.39, 3319.391, 3319.41, 3319.45, 3319.46, 3320.01, 3320.02, 138
3320.03, 3321.01, 3321.041, 3321.05, 3321.13, 3321.14, 3321.141, 139
3321.17, 3321.18, 3321.19, 3321.191, 3321.192, 3327.10, 4111.17, 140
4113.52, and 5705.391 and Chapters 102., 117., 1347., 2744., 141
3307., 3309., 3365., 3742., 4112., 4123., 4141., and 4167. of 142
the Revised Code as if it were a school district. 143

Section 2. That existing section 3326.11 of the Revised 144
Code is hereby repealed. 145

Section 3. (A) As used in this section, "school governing 146
body" means any of the following: 147

(1) The board of education of a city, local, exempted 148
village, or joint vocational school district; 149

(2) The governing authority of a community school 150
established under Chapter 3314. of the Revised Code; 151

(3) The governing body of a STEM school established under 152
Chapter 3326. of the Revised Code; 153

(4) The governing authority of a chartered nonpublic 154
school. 155

(B) Notwithstanding anything to the contrary in sections 156
3301.071, 3319.226, 3319.30, and 3319.36 and Chapters 3314. and 157
3326. of the Revised Code, or the administrative rules of the 158
State Board of Education, a school governing body may, in 159

accordance with the district's or school's own set of 160
educational requirements, employ an individual as a substitute 161
teacher, for the 2020-2021 school year only, provided that all 162
other applicable requirements and procedures contained in the 163
Revised Code and the Administrative Code with respect to that 164
individual's qualifications to be a substitute teacher in the 165
district or school are satisfied. 166

Section 4. Notwithstanding anything to the contrary in 167
the Revised Code, no school district, community school, or STEM 168
school and no chartered nonpublic school that is subject to 169
section 3301.163 of the Revised Code shall retain a student in 170
the third grade under that section or section 3313.608 of the 171
Revised Code based solely on a student's academic performance in 172
reading in the 2020-2021 school year unless the principal of the 173
school building in which a student is enrolled and the student's 174
reading teacher agree that the student is reading below grade 175
level and is not prepared to be promoted to the fourth grade. 176

Section 5. (A) For the 2020-2021 school year, the 177
Superintendent of Public Instruction may extend or waive any 178
deadline for an action required of the State Board of Education, 179
the Department of Education, or any person or entity licensed or 180
regulated by the State Board or Department related to the 181
following: 182

(1) The conducting of evaluations for school personnel 183
under Chapter 3319. of the Revised Code; 184

(2) Notice of intent not to reemploy school personnel 185
under Chapter 3319. of the Revised Code; 186

(3) The conducting of school safety drills under section 187
3737.73 of the Revised Code; 188

(4) The emergency management test required by division (E) of section 3313.536 of the Revised Code;	189 190
(5) The filling of a vacancy in a board of education;	191
(6) Updating of teacher evaluation policies to conform with the framework for evaluation of teachers adopted under section 3319.112 of the Revised Code;	192 193 194
(7) Identification and screening of gifted students under Chapter 3324. of the Revised Code.	195 196
(B) The authority to waive or extend deadlines permitted under division (A) of this section shall not apply to application deadlines for any scholarship program as defined in section 3301.0711 of the Revised Code.	197 198 199 200
Section 6. Except as necessary to comply with federal law, notwithstanding anything to the contrary in the Revised Code, all of the following shall apply:	201 202 203
(A) The Department of Education shall not publish state report card ratings under section 3302.03, 3302.033, 3314.012, or 3314.017 of the Revised Code for the 2020-2021 school year nor shall the Department be required to submit preliminary data for the report cards by July 31, 2021, as required by those sections. Furthermore, the Department shall not assign an overall letter grade under division (C) (3) of section 3302.03 of the Revised Code for any school district or building, shall not assign an individual grade to any component prescribed under division (C) (3) of section 3302.03 of the Revised Code, shall not assign a grade to any measures under division (C) (1) of section 3302.03 of the Revised Code, and shall not rank school districts, community schools, or STEM schools under section 3302.21 of the Revised Code for the 2020-2021 school year.	204 205 206 207 208 209 210 211 212 213 214 215 216 217

The Department shall report any data that it has regarding 218
the performance of districts and buildings for the 2020-2021 219
school year by September 15, 2021. 220

(B) Except as provided in division (C) of this section, 221
the absence of report card ratings for the 2020-2021 school year 222
shall have no effect in determining sanctions or penalties, and 223
shall not create a new starting point for determinations that 224
are based on ratings over multiple years. The report card 225
ratings of any previous or subsequent years shall be considered 226
in determining whether a school district or building is subject 227
to sanctions or penalties. If a school district or building was 228
subject to any of the following penalties or sanctions in the 229
2020-2021 school year based on its report card rating for 230
previous school years, those penalties or sanctions shall remain 231
in effect for the 2021-2022 school year. Those penalties and 232
sanctions include the following: 233

(1) Any restructuring provisions established under Chapter 234
3302. of the Revised Code, except as required under federal law; 235

(2) Provisions for the Columbus City School Pilot Project 236
under section 3302.042 of the Revised Code; 237

(3) Provisions for academic distress commissions under 238
section 3302.10 of the Revised Code. While a district subject to 239
an academic distress commission prior to the effective date of 240
this section shall be considered to be subject to an academic 241
distress commission for the 2021-2022 school year, that year 242
shall not be included for purposes of determining progressive 243
consequences under divisions (H), (I), (J), (K), and (L) of 244
section 3302.10 of the Revised Code that are in addition to 245
those that were being exercised by the chief executive officer 246
during the 2020-2021 school year or for purposes of the 247

appointment of a new board of education under division (K) of 248
that section. Nothing in division (B)(3) of this section shall 249
be construed to limit the powers that the chief executive 250
officer exercised under section 3302.10 of the Revised Code 251
prior to the 2021-2022 school year. 252

(4) Provisions prescribing new buildings where students 253
are eligible for the Educational Choice Scholarships under 254
section 3310.03 of the Revised Code; 255

(5) Provisions defining "challenged school districts" in 256
which new start-up community schools may be located, as 257
prescribed in section 3314.02 of the Revised Code; 258

(6) Provisions prescribing community school closure 259
requirements under section 3314.35 or 3314.351 of the Revised 260
Code; 261

(7) Provisions of state or federal law that identify 262
school districts or buildings for comprehensive or targeted 263
support and improvement or additional targeted support and 264
improvement. Districts and buildings so identified shall 265
continue to receive supports and interventions consistent with 266
their support and improvement plans in the 2021-2022 school 267
year. 268

(8) Provisions that determine the conditions under which 269
community schools may change sponsors under section 3314.034 of 270
the Revised Code. 271

(C) Nothing in division (B) of this section shall affect 272
the awarding of performance-based Educational Choice 273
Scholarships under section 3310.03 of the Revised Code for the 274
2021-2022 and 2022-2023 school years. 275

(D) Notwithstanding anything in section 3314.016 of the 276

Revised Code to the contrary, community school sponsor ratings 277
issued under that section for the 2020-2021 school year shall 278
have no effect in determining sanctions or penalties of a 279
sponsor under Chapter 3314. of the Revised Code but shall not 280
create a new starting point for determinations that are based on 281
ratings over multiple years. The sponsor ratings of any previous 282
or subsequent school years shall be considered when a sponsor is 283
subject to sanctions or penalties under that chapter. A sponsor 284
shall remain eligible in the 2021-2022 school year for any 285
incentives that the sponsor was eligible for in the 2020-2021 286
school year, and the 2020-2021 school year shall not count 287
toward the number of years in which a sponsor subject to 288
division (B) (7) (b) of section 3314.016 of the Revised Code is 289
not required to be evaluated. 290

Section 7. Section 3326.11 of the Revised Code is 291
presented in this act as a composite of the section as amended 292
by both H.B. 164 and H.B. 166 of the 133rd General Assembly. The 293
General Assembly, applying the principle stated in division (B) 294
of section 1.52 of the Revised Code that amendments are to be 295
harmonized if reasonably capable of simultaneous operation, 296
finds that the composite is the resulting version of the section 297
in effect prior to the effective date of the section as 298
presented in this act. 299

Section 8. Sections 3, 4, 5, and 6 of this act are hereby 300
declared to be an emergency measure necessary for the immediate 301
preservation of the public peace, health, and safety. The reason 302
for such necessity is to ensure school districts and schools can 303
employ an adequate number of substitute teachers for the 2020- 304
2021 school year to address the needs of the state arising from 305
the COVID-19 outbreak, to ensure that the changes made by 306
Section 4 of this act in regard to retention under the Third 307

Grade Reading Guarantee take effect as soon as possible after 308
the start of the 2020-2021 school year, and to ensure that the 309
changes made by Sections 5 and 6 of this act take effect as soon 310
as possible after the start of the 2020-2021 school year. 311
Therefore, Sections 3, 4, 5, and 6 of this act shall go into 312
immediate effect. 313