



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 498

131st General Assembly  
(As Introduced)

Rep. Kunze

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## BILL SUMMARY

- Permits a school district, community school, or STEM school to establish a policy that authorizes the district superintendent, or equivalent of the community or STEM school, to expel a student for not more than 60 days for communicating a threat to kill or do physical harm to persons or property under prescribed conditions.
- Authorizes a district board, community school governing authority, or STEM school governing body to require a student to "undergo an assessment" to determine whether the student poses a danger to the student's self or to other students or school employees.
- Authorizes the district superintendent to either (1) reinstate the student if the student shows sufficient rehabilitation or (2) extend the expulsion for not more than one calendar year if the student fails to undergo a required assessment.
- Requires the school district to develop a plan for the continued education of the student during the expulsion period.
- Permits a district board or law enforcement agency to file a civil action to seek recovery for restitution from the parent, guardian, or custodian of a student who is expelled under the bill's expulsion provisions for the costs to the district or agency associated with the student's conduct that gave rise to the expulsion.

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## CONTENT AND OPERATION

### Expulsion of students for communicating threats

The bill authorizes the board of education of a school district, the governing authority of a community school, or the governing body of a STEM school to establish a

policy that authorizes the district superintendent, or equivalent of the community or STEM school, to expel a student for not more than 60 days for communicating a threat to kill or do physical harm to persons or property provided that specified conditions are met. Those conditions are:

(1) The threat is communicated verbally or in writing in person or via telephone, cellular telephone, computer, pager, personal communication device, or other electronic communication device;

(2) The threat is made against persons or property at school or other school property, on a school bus, or at an interscholastic competition, an extracurricular event, or any other school; and

(3) The student who made the threat engaged in conduct that constitutes a "substantial step" in a course intended to culminate in the commission of the threatened act, as determined by the superintendent in consultation with the appropriate local law enforcement agency.<sup>1</sup>

The bill also specifies that its new expulsion provisions apply regardless of whether the person or property that is the object of the threat actually receives the communication of the threat.<sup>2</sup>

### **Reinstatement of expelled students**

Under the bill, when a student is expelled, the district or school may require that student to undergo an assessment to determine whether the student poses a danger to the student's self or to other students or school employees. Additionally, it provides for the reinstatement of the student at the end of the expulsion period, if the student shows sufficient rehabilitation according to the superintendent. However, the bill also authorizes the superintendent to extend the expulsion for not more than one calendar year if the student fails to undergo a required assessment. If a student's expulsion is extended, the superintendent is similarly authorized to reinstate the student at the end of the extended expulsion period if that student shows sufficient rehabilitation.<sup>3</sup>

### **Continued education of expelled students**

The bill requires the school district to develop a plan for the continued education of a student expelled under the bill's new expulsion provisions during the expulsion

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<sup>1</sup> R.C. 3313.66(B)(6)(a) to (c).

<sup>2</sup> R.C. 3313.66(B)(6)(c), second paragraph.

<sup>3</sup> R.C. 3313.66(B)(6)(c), third paragraph.



period. The bill states that this plan may include education provided to the student by the district in an alternate setting.<sup>4</sup>

### **Due process**

The bill specifies that its new expulsion provisions are subject to the same due process procedures as for any other type of expulsion under current law.<sup>5</sup> The due process procedures of current law are described below.

### **Required notifications**

Prior to expelling a student, current law requires the superintendent to (1) give the student and the student's parent written notice of the intention to expel the student and the reasons for the expulsion and (2) provide the student and the student's parent an opportunity to appear before the superintendent to challenge the expulsion. The required notice must include specified information, such as the reasons for the intended expulsion, notification of the opportunity to appear before the superintendent to challenge these reasons, and notification of the time and place to appear, which must be between three and five days after the notice is given, unless the superintendent grants an extension.<sup>6</sup>

Additionally, within one school day after a student begins serving an expulsion, the superintendent must provide written notification of the expulsion to the student's parent and the district or school treasurer or fiscal officer. The notice must (1) explain the reasons for the expulsion, (2) inform the parent of the right of the parent or student to appeal the expulsion to the district or school board, and (3) state that the expulsion may be subject to extension and the superintendent may seek the student's permanent exclusion, if applicable. When a student is expelled for more than 20 school days or for a period covering more than one semester or school year, the superintendent must provide information about public and private agencies that offer programs to improve the behavioral problems that contributed to the student's expulsion.<sup>7</sup>

### **Appeals process**

Similarly, the student or the student's parent may appeal an expulsion for imminent and severe endangerment to the district or school board under the provisions of current law. Accordingly, if the expulsion is appealed, the board must conduct a

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<sup>4</sup> R.C. 3313.66(B)(6)(c), fourth paragraph.

<sup>5</sup> R.C. 3313.66(B)(6)(c), fifth paragraph.

<sup>6</sup> R.C. 3313.66(B)(7).

<sup>7</sup> R.C. 3313.66(D).

hearing before the board, or its designee, regarding the expulsion. At the request of the student or the student's parent or attorney, the board may hold the hearing in executive session, but the board still must make its finding only at a public meeting. The board, by a majority vote of its full membership or by the action of its designee, may (1) affirm the order of expulsion, (2) reinstate the student, or (3) otherwise reverse, vacate, or modify the order of expulsion. The board's decision is appealable to the court of common pleas where the district or school is located.<sup>8</sup>

### **Civil action**

The bill permits a school district board of education or law enforcement agency to file a civil action to seek recovery for restitution from the parent, guardian, or custodian of a student who is expelled under the bill's new expulsion provisions for the costs to the district or agency associated with the student's conduct that gave rise to the expulsion.<sup>9</sup>

### **Miscellaneous provisions**

The bill makes the following miscellaneous changes:

(1) Specifies that an expulsion under the bill's new provisions extends, as necessary, into the school year following the school year in which the incident that gives rise to the expulsion takes place (similar to current law regarding other types of expulsions);<sup>10</sup>

(2) Specifies that the bill's new expulsion provisions do not affect a district's obligation to provide a free and appropriate education to children with disabilities, and do not limit or prohibit bringing a juvenile or criminal action against a student who is expelled under the bill's new expulsion provisions;<sup>11</sup> and

(3) For all types of expulsions (not just the bill's new expulsion provisions), specifies that the deadline for the notice parents and students must give to the district or school of their intent to appeal an expulsion, as prescribed in a district's or school's code of conduct, must be not less than 14 "calendar" days, rather than 14 days as under current law.<sup>12</sup>

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<sup>8</sup> R.C. 3313.66(E).

<sup>9</sup> R.C. 3313.668.

<sup>10</sup> R.C. 3313.66(B)(6)(c), eighth paragraph.

<sup>11</sup> R.C. 3313.66(B)(6)(c), sixth and seventh paragraphs.

<sup>12</sup> R.C. 3313.661.



## Background on expulsion and suspension policies

Current law provides some mechanisms for removing students from a public school for disciplinary reasons, including suspension, expulsion, reassignment, emergency removal, and permanent exclusion. Under current law, each school district, community school, and STEM school must adopt a code of conduct for the district or school and policies for the enforcement of that code.<sup>13</sup> A student that is subject to suspension, expulsion, or permanent exclusion is entitled to specific due process procedures *prior* to imposition of the discipline, as well as an appeals process. However, in the case of emergency removal, which is temporary in nature, the student is entitled to due process following the imposition of the disciplinary action.

### Suspension and expulsion

The district superintendent or school principal may "suspend" a student for up to ten school days for minor violations of the district's or school's code of conduct.<sup>14</sup> The superintendent (and not a principal) may also "expel" a student for up to the greater of 80 school days or the remainder of the school term for more serious violations of that code.<sup>15</sup> In addition, the superintendent must expel a student for one full year for *carrying* a firearm to school and, depending upon board policy, may expel a student for one full year for possessing a firearm or knife at school or a school-sponsored activity, for causing serious physical harm to persons or property at school or a school-sponsored activity, or making a bomb threat to a school or school-sponsored activity.<sup>16</sup>

The law also provides for due process procedures that must be followed in the case of these disciplinary actions. In general, suspensions and expulsions require prior notice to the student and the student's parent and an opportunity for the student to explain the student's actions. Suspensions and expulsions may be appealed to the district board of education, and, if applicable, the court of common pleas.<sup>17</sup> (For a more detailed explanation on the current law regarding these due process procedures, see "**Due process**" above.)

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<sup>13</sup> R.C. 3313.661(A).

<sup>14</sup> R.C. 3313.66(A).

<sup>15</sup> R.C. 3313.66(B)(1).

<sup>16</sup> R.C. 3313.66(B)(2) to (5).

<sup>17</sup> R.C. 3313.66(B)(7), (D), and (E).



## **Reassignment to an alternative school**

School districts are specifically authorized to remove students with disciplinary or academic problems from their home schools and place them in an alternative school established by the district. An alternative school may serve students who are on suspension, are truant, are failing academically, have a history of class disruption, have been discharged from the custody of the Department of Youth Services, or exhibit other academic or behavioral problems.<sup>18</sup> The "Big-Eight" school districts (Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown) and school districts with significantly substandard graduation rates are required to operate at least one alternative school, but any school district is authorized to establish an alternative school.<sup>19</sup> Each district operating an alternative school must develop a plan for the school that includes the reasons for which students may be admitted to the school and criteria and procedures for returning students to their home schools.<sup>20</sup>

## **Emergency removal**

If a student's presence poses a continuing danger to persons or property or an ongoing threat to the academic process, the superintendent or principal may temporarily remove a student from curricular activities or the school premises without first providing the student with notice and an opportunity for a hearing. However, the student must be notified in writing of the reasons for the removal and receive a hearing within three school days after the removal. This hearing must be conducted in the same manner as a suspension hearing, except that if the student will likely be expelled, the hearing must comply with the expulsion procedures.<sup>21</sup>

## **Permanent exclusion**

The Superintendent of Public Instruction may issue an adjudication order that permanently excludes a student from attending any public school in Ohio if the student is convicted of or adjudicated a delinquent child for committing, when the student was 16 or older, a permanent exclusion violation. A permanent exclusion violation is any of the following acts: (1) conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone, (2) carrying a concealed weapon, drug trafficking, or drug possession (other than a minor drug possession offense) that was committed on school district property or at a district-sponsored activity, (3) aggravated murder,

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<sup>18</sup> R.C. 3313.533(A)(1), not in the bill.

<sup>19</sup> R.C. 3313.534, not in the bill.

<sup>20</sup> R.C. 3313.533(A)(3), not in the bill.

<sup>21</sup> R.C. 3313.66(C).



murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, rape, gross sexual imposition, or felonious sexual penetration that was committed on school district property or at a district-sponsored activity, if the victim was a district employee, or (4) complicity in any act described in (1) to (3), regardless of where the act of complicity occurred.

A student's permanent exclusion lasts until the state Superintendent issues an adjudication order revoking the permanent exclusion.

The decision of the state Superintendent to permanently exclude a student is subject to appeal to the appropriate court of common pleas.<sup>22</sup>

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## HISTORY

ACTION	DATE
Introduced	03-24-16

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<sup>22</sup> R.C. 3301.121 and 3313.662, neither in the bill.

