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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 164  
133<sup>rd</sup> General Assembly

## Final Analysis

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**Version:** As Passed by the General Assembly

**Primary Sponsor:** Rep. Ginter

**Effective date:** Emergency and appropriations: June 19, 2020; provisions regarding religious expression in schools, Quality Community School Support Program, and the additional payment for school districts with a net decrease in FY 2020 state funding effective September 18, 2020

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UPDATED VERSION\*

## SUMMARY

### Religious expression in schools

- Requires public schools to give students who wish to meet for the purpose of religious expression the same access to school facilities given to secular student groups, without regard to the content of the expression.
- Removes a provision that permitted a school district to limit the exercise or expression of religion to lunch periods or other noninstructional time periods.
- Authorizes students enrolled in public schools to engage in religious expression before, during, and after school hours in the same manner and to the same extent as they may engage in secular activities or expression before, during, and after school hours.
- Prohibits public schools from restricting a student from engaging in religious expression in completing homework, artwork, or other assignments.
- Prohibits public schools from rewarding or penalizing a student based on the religious content of the student's homework, artwork, or other assignments.
- Designates the act's provisions regarding religious expression as the "Ohio Student Religious Liberties Act of 2019."

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\* This version updates the effective date.

## School funding adjustments

- Requires the Department of Education to make a payment, for FYs 2020 and 2021, to each city, local, exempted village, or joint vocational school district with more than a 10% decrease in the taxable value of utility tangible personal property (TPP) that has at least one power plant located within its territory.
- Specifies that if a city, local, or exempted village school district experienced an increase in the taxable value of all utility TPP subject to taxation between tax years 2016 and 2017 and, as a result, had funds deducted from its state education aid, the Department must credit the deducted amount to the district.
- Requires the Department to pay additional funds to each city, local, and exempted village school district that, for FY 2020, experienced a net reduction of foundation funding exceeding 6%, after counting state budget reductions and pandemic relief funding from the federal CARES Act.
- Appropriates \$24 million to the Department for FY 2020 to support the additional payment offsetting the budget reduction.
- Changes the existing criteria for a community school with an operator that operates schools in other states to be designated as a “community school of quality” for the Quality Community School Support Program by also requiring the school to be in its first year of operation.

## Other education provisions

### Teacher and principal evaluations

- Permits a school district that did not participate in the teacher evaluation pilot program established for the 2019-2020 school year to continue evaluating teachers on two-year or three-year evaluation cycles even if the district completes an evaluation for them in the 2019-2020 school year without a student growth measure.
- Specifies that a teacher who did not have a student growth measure as part of an evaluation for the 2019-2020 school year must remain at the same point in the teacher’s evaluation cycle, and retain the same evaluation rating, for the 2020-2021 school year as the 2019-2020 school year.
- Authorizes a school district to choose to complete a principal’s performance evaluation for the 2019-2020 school year without using a student growth measure as part of the evaluation.
- Prohibits a school district from using value-added progress dimension data, high-quality student data, or other student academic growth data to measure student learning attributable to a teacher or principal while conducting evaluations for the 2020-2021 school year.

## **High school diploma qualifications**

- Permits a student who was scheduled to take or re-take an end-of-course exam in the 2019-2020 school year, but did not do so because the exam was cancelled, to use the student's final course grade in lieu of an exam score to satisfy conditions for a high school diploma.
- Specifies that a student who was scheduled to take an end-of-course exam for the first time in the 2019-2020 school year may use a final grade for a course completed in that year, while a student who was scheduled to re-take an exam that was cancelled may use a grade for a course completed in that year or a prior year.

## **Third-Grade Reading Guarantee**

- For the 2020-2021 school year only, prohibits a school district or school from retaining in the third grade a student who does not attain a passing score on the fall administration of the third grade English language arts achievement assessment under specified conditions.
- Prohibits the State Board of Education from reviewing and adjusting upward the promotion score for the third grade English language arts assessment for the 2020-2021 school year and, instead, requires the use of the 2019-2020 promotion score for the 2020-2021 school year.
- Exempts a teacher assigned to provide intense remediation reading assistance to a student in the 2020-2021 school year under the Third-Grade Reading Guarantee from certain criteria otherwise required under continuing law.

## **Reading improvement plans**

- Exempts public schools from having to establish reading improvement plans for the 2020-2021 school year based on assessment results for the 2019-2020 school year.

## **Academic assessment records for home instructed students**

- Exempts parents of students receiving home instruction from the administrative rule requirement to submit an "academic assessment record" for the 2019-2020 school year to the student's resident school district superintendent as a condition of allowing the student to continue receiving home instruction in 2020-2021.

## **Community school sponsor ratings**

- Prohibits the Department from issuing any community school sponsor ratings for the 2019-2020 school year.
- Requires the Department to allow a sponsor to indicate that it could not comply with an applicable law or administrative rule or fully adhere to a quality practice due to the closure of schools.

- Establishes a safe harbor from penalties and sanctions for community school sponsors based on the absence of community school sponsor ratings for the 2019-2020 school year, in which only ratings from previous and subsequent years are considered.
- Allows a community school sponsor to remain eligible in the 2020-2021 school year for any incentives that the sponsor was eligible for in 2019-2020.

### **Services to special needs students**

- Extends through the end of the 2020-2021 school year authority enacted in H.B. 197 of the 133<sup>rd</sup> General Assembly for specified licensed nonclassroom personnel who provide professional services to students with disabilities to do so electronically or via telehealth communication.
- Adds school psychologists licensed by the State Board of Education to the professionals who may use this authority applies.
- Permits a teacher who is licensed to teach special education and is employed to teach a “public school preschool integrated class” prior to the effective date of licensure requirement changes by the State Board to continue to teach such a class until the teacher retires, resigns, or is reassigned.

### **Remote learning**

- Permits certain public schools that have not otherwise been approved to use a “blended” learning model under continuing law for the 2020-2021 school year to adopt a plan to provide instruction using a “remote” learning model for the that year.

### **Grade band flexibility**

- Permits a school district to employ or reassign a licensed teacher to teach a subject area or grade level for which the teacher is not licensed for the 2020-2021 school year under specified conditions.

### **Community school governing authorities**

- Permits a person to serve on the governing authority of more than five start-up community schools under specified conditions.

### **Storm shelters**

- Extends from September 15, 2020, to November 30, 2022, the existing moratorium regarding the construction of storm shelters in private and public school buildings.

### **Online bus driver training**

- Requires the Department to develop an online training program to satisfy the classroom portion of pre-service and annual in-service training for school bus driver certification for the 2020-2021 school year.

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## DETAILED ANALYSIS

### RELIGIOUS EXPRESSION IN SCHOOLS

#### Access to school facilities by religious student groups

The act requires a public school (school district, community school, STEM school, and college-preparatory boarding school) to give students who wish to conduct a meeting for the purpose of engaging in religious expression the same access to school facilities as student secular groups, without regard to the content of a student's or group's expression.<sup>1</sup>

#### Religious expression at school

Law retained in part by the act prohibits a school district board of education from adopting any policy or rule respecting or promoting an establishment of religion or prohibiting any student from the exercise or expression of the student's religious beliefs. The act removes a provision of that law permitting a school district to limit the exercise or expression of a student's religious beliefs to lunch period or other noninstructional time periods when students are free to associate.<sup>2</sup> That section of law applies only to school districts.

The act also enacts a separate new provision stating that a student enrolled in any public school may engage in religious expression "before, during, and after school hours in the same manner and to the same extent that a student is permitted to engage in secular activities or expression before, during, and after school hours."<sup>3</sup>

The act further prohibits public schools from restricting a student from engaging in religious expression in the completion of homework, artwork, or other written or oral assignments. Grades and scores for those assignments must be calculated using ordinary academic standards of substance and relevance, including any legitimate pedagogical concerns, and must not penalize or reward a student based on the religious content of the student's work.<sup>4</sup>

For purposes of its provisions, the act defines "religious expression" as including any of the following:

1. Prayer;
2. Religious gatherings, including, but not limited to, prayer groups, religious clubs, See You At The Pole gatherings, or other religious gatherings;
3. Distribution of written materials or literature of a religious nature;

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<sup>1</sup> R.C. 3320.02(B); conforming changes in R.C. 3314.03, 3326.11, and 3328.24.

<sup>2</sup> R.C. 3313.601.

<sup>3</sup> R.C. 3320.02(A).

<sup>4</sup> R.C. 3320.03; conforming changes in R.C. 3314.03, 3326.11, and 3328.24.

4. Any other activity of a religious nature, including wearing symbolic clothing or expression of a religious viewpoint, provided that the activity is not obscene, vulgar, offensively lewd, or indecent.<sup>5</sup>

## **Title**

The act states that its substantive provisions regarding access and religious expression are to be collectively known as the “Ohio Student Religious Liberties Act of 2019.”<sup>6</sup>

## **Intent statement**

The act states that the act is not intended nor shall it be construed to limit or abrogate religious expression of students already guaranteed under the U.S. and Ohio Constitutions.<sup>7</sup>

## **SCHOOL FUNDING ADJUSTMENTS**

### **Payment for districts with decreases in utility TPP value**

The act requires the Department of Education to make a payment, for FYs 2020 and 2021, to each city, local, exempted village, or joint vocational school district with more than a 10% decrease in the taxable value of utility tangible personal property (TPP) that has at least one power plant located within its territory.<sup>8</sup> To qualify for the FY 2020 payment, a district must have experienced this decrease between tax years 2017 and 2019, tax years 2018 and 2019, or tax years 2017 and 2018.<sup>9</sup> To qualify for the FY 2021 payment, a district must have experienced this decrease between tax years 2017 and 2020 or tax years 2019 and 2020.<sup>10</sup>

### **Eligibility determination**

The Tax Commissioner must determine which districts are eligible for this payment no later than June 29, 2020 (for the FY 2020 payment) or May 15, 2021 (for the FY 2021 payment).<sup>11</sup> For each eligible district, the Commissioner must certify the following information to the Department:

1. If the district is eligible for the FY 2020 payment, its total taxable value for tax year 2019 and the change in taxes charged and payable on the district’s total taxable value for tax years 2017 and 2019;

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<sup>5</sup> R.C. 3320.01(B); conforming changes in R.C. 3314.03, 3326.11, and 3328.24.

<sup>6</sup> R.C. 3320.01(A).

<sup>7</sup> Section 22.

<sup>8</sup> Section 9(A)(2) and (3) and (B)(2) and (3).

<sup>9</sup> Section 9(A)(1)(a), (b), and (c).

<sup>10</sup> Section 9(B)(1)(a) and (b).

<sup>11</sup> Section 9(A)(1) and (B)(1).

2. If the district is eligible for the FY 2021 payment, its total taxable value for tax year 2020 and the change in taxes charged and payable on the district's total taxable value for tax years 2017 and 2020; and
3. If the district is eligible for either payment, the taxable value of the utility TPP decrease and the change in taxes charged and payable on the change in taxable value.<sup>12</sup>

### **Payment amount**

The act requires the Department, for purposes of computing the payment, to replace the three-year average valuations used in computing a district's state education aid for FY 2019 with the district's total taxable value for tax year 2019 (for the FY 2020 payment) or tax year 2020 (for the FY 2021 payment). It then must recompute the state education aid for FY 2019 without applying any funding limitations enacted by the General Assembly.

The amount of a district's payment is equal to the *greater* of 1 or 2 as described below:

1. The lesser of either:
  - a. The positive difference between the district's state education aid for FY 2019 prior to the recomputation and the district's recomputed state education aid for FY 2019; or
  - b. The absolute value of the change in taxes charged and payable on the district's total taxable value for tax years 2017 and 2019 (for the FY 2020 payment) or for tax years 2017 and 2020 (for the FY 2021 payment).
2. 0.50 times the absolute value of the change in taxes charged and payable on the district's total taxable value for tax years 2017 and 2019 (for the FY 2020 payment) or for tax years 2017 and 2020 (for the FY 2021 payment).<sup>13</sup>

### **Payment deadline**

The Department must make FY 2020 payments no later than July 6, 2020, and must make FY 2021 payments between June 1 and June 30, 2021.<sup>14</sup>

### **Funding adjustment for districts with utility TPP value increases**

The act also specifies that, if a city, local, or exempted village school district experienced an increase in the taxable value of all utility TPP subject to taxation by the district between tax years 2016 and 2017 and, as a result, had funds deducted from its state education aid in

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<sup>12</sup> Section 9(A)(2) and (B)(2).

<sup>13</sup> Section 9(A)(3) and (B)(3).

<sup>14</sup> Section 9(C).



accordance with former law,<sup>15</sup> the Department must credit the deducted amount to the district no later than June 29, 2020.<sup>16</sup>

## **Additional payment for FY 2020**

### **Eligibility**

The act prescribes an additional payment for FY 2020 to city, local, and exempted village school districts that experienced a net decrease in their FY 2020 state foundation funding exceeding 6%, due to the state budget reductions ordered by the Governor, but after accounting for federal pandemic relief funds. The act appropriates \$24 million to make the payment.

The payment equals the difference between:

- 94% of the district’s foundation funding for FY 2020, calculated before reductions by the Governor’s order; and
- The sum of the district’s foundation funding for FY 2020, after reductions by the Governor’s order, and its funding from the federal Elementary and Secondary School Emergency Relief Fund established by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act.<sup>17</sup>

## **Quality Community School Support Program**

The act changes the criteria for a community school with an operator that operates schools in other states to be designated as a “community school of quality” for the Quality Community School Support Program by also requiring the school to be in its first year of operation. These schools must also have a sponsor that was rated “exemplary” or “effective” on the sponsor’s most recent report evaluation and satisfy either of the following:

1. One of the operator’s schools received funding through the Federal Charter School Program or the Charter School Growth Fund; or
2. All of the following criteria are satisfied:
  - a. One of the operator’s out-of-state schools performed better than the school district in which the in-state school is located, as determined by the Department;
  - b. At least 50% of students enrolled in all of the operator’s schools are economically disadvantaged;
  - c. The operator is in good standing in all states where it operates schools; and

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<sup>15</sup> Former R.C. 3317.028(B).

<sup>16</sup> Section 9(D).

<sup>17</sup> Section 19.

- d. The operator does not have financial viability issues preventing it from effectively operating a community school in Ohio.<sup>18</sup>

The program was created for FYs 2020 and 2021 in H.B. 166 of the 133<sup>rd</sup> General Assembly. It provides “community schools of quality” \$1,750 in each fiscal year for each student identified as economically disadvantaged and \$1,000 in each fiscal year for each student who is not identified as economically disadvantaged. For FY 2020, “community schools of quality” have already been designated and funding has been paid. Therefore, the act’s change will affect designations of “community schools of quality” for only FY 2021.

## **OTHER EDUCATION PROVISIONS**

### **Teacher and principal evaluations for 2019-2020**

The act permits a school district that did not participate in the teacher evaluation pilot program established for the 2019-2020 school year to continue evaluating teachers on two-year or three-year evaluation cycles, even if the district completes an evaluation for those teachers in the 2019-2020 school year without using a student growth measure. It also specifies that a teacher who did not have a student growth measure as part of an evaluation for the 2019-2020 school year must remain at the same point in the teacher’s evaluation cycle, and retain the same evaluation rating, for the 2020-2021 school year as for 2019-2020.<sup>19</sup> Similarly, the act authorizes a school district to choose to complete a principal’s performance evaluation for 2019-2020 without using a student growth measure as part of the evaluation.<sup>20</sup>

H.B. 197 of the 133<sup>rd</sup> General Assembly authorized a school district that had not conducted an evaluation of a district employee, including teachers, administrators, or the superintendent, prior to the Director of Health’s March 14, 2020, order “In re: Order the Closure of All K-12 Schools in the State of Ohio” to elect not to conduct that evaluation if it was impossible or impracticable to do so.<sup>21</sup>

### **Teacher and principal evaluations for 2020-2021**

The act prohibits a school district from using value-added progress dimension data, any other high-quality student data as defined by the State Board, or any other student academic growth data to measure student learning attributable to a teacher or principal while conducting evaluations for the 2020-2021 school year. Rather, it requires that a district use the other factors and components prescribed under continuing law to conduct those evaluations. However, it also states that the act’s provision must not be construed as prohibiting a district from considering as part of an evaluation how a teacher or principal collects, analyzes, and uses

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<sup>18</sup> Section 265.335(B)(3) of H.B. 166 of the 133<sup>rd</sup> General Assembly, amended in Sections 3 and 4 of the act.

<sup>19</sup> Section 7 of S.B. 216 of the 132<sup>nd</sup> General Assembly, amended in Sections 7 and 8 of the act.

<sup>20</sup> Section 11.

<sup>21</sup> Section 17(M) of H.B. 197 of the 133<sup>rd</sup> General Assembly.

student data, including student academic growth data, to adapt instruction to meet individual student needs or to improve the teacher's or principal's practice.<sup>22</sup>

H.B. 197 prohibited using value-added progress dimension data from the 2019-2020 school year to measure student learning attributable to a teacher in that teacher's evaluation.<sup>23</sup>

## High school diploma qualifications

The act permits a student who was scheduled to take or re-take an end-of-course exam in the 2019-2020 school year, but did not do so because the exam was cancelled, to use the student's final course grade in lieu of an exam score to satisfy conditions for a high school diploma.

A student who was scheduled to take an end-of-course exam for the first time in the 2019-2020 school year may use the final grade the student received in that school year, while a student who was scheduled to re-take an exam may use a grade from that school year or a prior school year.<sup>24</sup>

For the purposes of determining whether a student satisfies a condition for a high school diploma, the act establishes how final grades are equivalent to a competency score and end-of-course exam performance levels.

The following table indicates how a final course grade is equivalent to an exam performance level under the act, and how many graduation points a student may earn for each exam performance level under continuing law.

Final Grade	Exam performance level	Graduation points
"A+," "A," or "A-"	Advanced	5
"B+," "B," or "B-"	Accelerated	4
"C+," "C," or "C-"	Proficient	3
"D+," "D," or "D-"	Basic	2
"F"	Limited	1

Under the act, any "C" grade or higher is equivalent to a competency score. The act also establishes how a pass/fail designation may be used to satisfy high school diploma conditions. A fail designation is equivalent to a "F" letter grade and an exam performance level of Limited. For a pass designation, the act specifies that a student's school district or school must

<sup>22</sup> Section 10.

<sup>23</sup> Section 17(E) of H.B. 197 of the 133<sup>rd</sup> General Assembly.

<sup>24</sup> Section 12(A) and (B).

determine to which exam performance level a student's performance in the class is equivalent. However, it also specifies that earning a pass designation is equivalent to a competency score.<sup>25</sup>

In addition, a student who completes a course associated with an end-of-course exam must be considered to have completed an administration of that exam for the purposes of determining whether the student may use an alternative demonstration competency in lieu of attaining a competency score.<sup>26</sup>

Finally, the act permits a student who completed a course associated with an end-of-course exam to choose to take that exam in a subsequent school year.<sup>27</sup>

## **Background on graduation requirements**

Under continuing law, one way a student who entered ninth grade for the first time on or after July 1, 2014, but prior to July 1, 2019, (the Classes of 2018 through 2022) may qualify for a high school diploma is by attaining a cumulative performance score on the end-of-course exams prescribed by the State Board. The State Board prescribed a system under which a student earns a cumulative performance score by earning points toward graduation based on the student's performance levels on the end-of-course exams (see table above).

Continuing law also requires a student who entered ninth grade for the first time on or after July 1, 2019 (the Classes of 2023 and on), and permits a student in the Classes of 2018 through 2022, to qualify for a high school diploma by attaining a "competency score" on each of the Algebra I and English Language Arts II end-of-course exams and earning at least two state diploma seals. Several of the state diploma seals involve attaining a proficient or higher score on one or more end-of-course exams.

Additionally, a student who does not attain a competency score on both the Algebra I and English Language Arts II end-of-course exams after at least two administrations of those exams is permitted to demonstrate competency in the failed subject areas using one of several alternative options prescribed under continuing law.<sup>28</sup>

## **Third-Grade Reading Guarantee**

### **Retention**

For the 2020-2021 school year only, the act prohibits a school district or school from retaining in the third grade a student who does not attain a passing score on the fall administration of the third grade English language arts achievement assessment. However, it

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<sup>25</sup> Section 12(B)(7).

<sup>26</sup> Section 12(C).

<sup>27</sup> Section 12(D).

<sup>28</sup> R.C. 3301.0712(B), 3313.618(A) and (B), and 3313.6114, none in the act. Information about the State Board's system of graduation points can be found at <http://education.ohio.gov/Topics/Ohio-s-Graduation-Requirements/18-Points-on-State-Tests>.

also states that this prohibition applies only if the student's principal and reading teacher agree that other evaluations of the student's skill in reading demonstrate that the student is academically prepared to be promoted to the fourth grade.<sup>29</sup>

### **Promotion scores**

The act prohibits the State Board from reviewing and adjusting upward the promotion score for the third grade English language arts assessment for the 2020-2021 school year. Instead, it requires use of the 2019-2020 promotion score for the 2020-2021 school year. It further requires the State Board to resume reviewing and adjusting upward the promotion score in accordance with continuing law for 2021-2022.<sup>30</sup>

Under continuing law, the State Board must (1) determine the level of achievement on the third grade English language arts assessment that a student must attain to be promoted to the fourth grade and (2) review and adjust upward each year the level of achievement required for the Third-Grade Reading Guarantee until it is equal to "proficient." For the 2019-2020 school year the achievement score required on the third grade English language arts assessment for promotion was 683.<sup>31</sup>

### **Remediation teacher qualifications**

The act exempts a teacher assigned to provide intense remediation reading assistance to a student in the 2020-2021 school year under the Third-Grade Reading Guarantee from having to meet the criteria otherwise required under continuing law.<sup>32</sup>

Under continuing law, for any student who is retained under the Third-Grade Reading Guarantee, a district must provide intense remediation services to help that student read at grade level.<sup>33</sup> One required service is that the student will be assigned a teacher who:

1. Holds a reading endorsement on the teacher's license and has attained a passing score on the corresponding assessment for that endorsement;
2. Has completed a master's degree program with a major in reading;
3. Was rated "most effective" for reading instruction consecutively for the most recent two years based on assessments of student growth measures developed by a vendor and that is on the list of student assessments approved by the State Board;
4. Was rated "above expected value added," in reading instruction, as determined by criteria established by the Department, for the most recent, consecutive two years;

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<sup>29</sup> Section 18.

<sup>30</sup> Section 13(A).

<sup>31</sup> R.C. 3301.0710(A)(3), not in the act. See also <http://education.ohio.gov/Topics/Learning-in-Ohio/Literacy/Third-Grade-Reading-Guarantee/Third-Grade-Reading-Guarantee-District-Resources>.

<sup>32</sup> Section 13(B).

<sup>33</sup> R.C. 3313.608(B)(3), not in the act.

5. Has earned a passing score on a rigorous test of principles of scientifically research-based reading instruction as approved by the State Board; or
6. Holds an educator license for teaching grades pre-kindergarten through three or four through nine issued on or after July 1, 2017.<sup>34</sup>

## Reading improvement plans

The act exempts public schools from two separate requirements to establish reading improvement plans in the 2020-2021 school year based on assessment results for the 2019-2020 school year.<sup>35</sup>

Continuing law otherwise requires a school district, community school, or STEM school to establish a reading improvement plan, which must be approved by the district board of education or school governing body, if less than 80% of its students attain a proficient score or higher on the third grade English language arts assessment.<sup>36</sup>

Another provision requires a school district or a community school that failed to meet a specified level of achievement on reading-related measures, as reported on the past two consecutive report cards, to submit a “reading achievement improvement plan” to the Department. Specifically, any district or school that meets *both* of the following criteria must fulfill this requirement:

1. The district or school received a grade of “D” or “F” on the K-3 literacy progress measure; *and*
2. Less than 60% of the district’s or school’s students who took the third grade English language arts assessment prescribed for that school year attained at least a proficient score.

For each subsequent year, the district or school must annually submit an improvement plan until it no longer meets both criteria.<sup>37</sup>

## Academic assessment records for home instructed students

The act exempts parents of students receiving home instruction from the administrative rule requirement to submit an academic assessment record for the 2019-2020 school year to the student’s resident school district superintendent as a condition of allowing the student to continue home instruction for the 2020-2021 school year.<sup>38</sup>

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<sup>34</sup> R.C. 3313.608(H), not in the act.

<sup>35</sup> Section 13(C) and Section 14.

<sup>36</sup> R.C. 3301.0715(G), not in the act.

<sup>37</sup> R.C. 3302.13, not in the act.

<sup>38</sup> Section 17(L) of H.B. 197 of the 133<sup>rd</sup> General Assembly, amended in Sections 5 and 6 of the act.

H.B. 197 of the 133<sup>rd</sup> General Assembly exempted parents of students receiving home instruction, for the 2019-2020 school year, from submitting the results of a standardized achievement assessment administered for the student, which under the administrative rule is only one alternative for the academic assessment record. It did not affect the other alternatives prescribed in the rule, which are a written narrative indicating that a portfolio of samples of the student's work has been reviewed, or an alternative assessment.<sup>39</sup> The act temporarily exempts home instructed students from the entire assessment record requirement.

### **Community school sponsor ratings**

H.B. 197 of the 133<sup>rd</sup> General Assembly prohibited the Department from (1) issuing a rating for the academic performance component for community school sponsors, (2) using that rating for the overall rating, and (3) finding a sponsor out of compliance with laws and rules for any requirement for an action that should have occurred while schools were closed due to the COVID-19 outbreak. The act, on the other hand, prohibits the Department from issuing *any* community school sponsor ratings at all for the 2019-2020 school year. It also removes H.B. 197's prohibition on finding a sponsor or community school out of compliance with an applicable law or administrative rule for any requirement of an action that should have occurred while schools were closed. Instead, the Department must allow community school sponsors to indicate that they could not comply with an applicable law or administrative rule or fully adhere to a quality practice because the action could not be completed while schools were closed.

The act further specifies that the absence of community school sponsor ratings for the 2019-2020 school year has no effect in determining sanctions or penalties of community school sponsors and does not create a new starting point for determinations that are based on ratings over multiple years. The ratings of any previous or subsequent school years must be considered in determining whether a sponsor is subject to sanctions or penalties.

However, sponsors remain eligible for the 2020-2021 school year for any incentives that the sponsor was eligible for in 2019-2020. The act specifically states that the 2019-2020 school year does not count toward the number of years in which a sponsor may not be evaluated if a sponsor previously received a rating of either "exemplary" or "effective" for at least three consecutive years.<sup>40</sup>

### **Services to special needs students**

The act extends through the end of the 2020-2021 school year authority enacted in H.B. 197 of the 133<sup>rd</sup> General Assembly for specified licensed nonclassroom personnel providing professional services to students with disabilities to do so electronically or via telehealth communication. It also adds school psychologists licensed by the State Board of Education to

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<sup>39</sup> Ohio Administrative Code (O.A.C.) 3301-34-04.

<sup>40</sup> Section 17(F) of H.B. 197 of the 133<sup>rd</sup> General Assembly, amended in Sections 5 and 6 of the act. See R.C. 3314.016(B)(7)(b), not in the act.

the professionals who may use this authority. The authority continues to apply to intervention specialists licensed by the State Board and personnel licensed by the Speech and Hearing Professionals Board; the Occupational Therapy, Physical Therapy, and Athletic Trainers Board; the State Board of Psychology; and the Counselor, Social Worker, and Marriage and Family Therapist Board.<sup>41</sup> (See also p. 26 of the Final Analysis for H.B. 197 at <https://www.legislature.ohio.gov/download?key=13600&format=pdf>.)

## **Preschool special education teachers**

The act permits a teacher who is licensed to teach special education and is employed to teach a “public school preschool integrated class” prior to the effective date of licensure requirement changes by the State Board to continue to teach such a class until the teacher retires, resigns, or is reassigned. Thereafter, the teacher must meet the licensure qualifications prescribed by administrative rule. The act defines a public school preschool integrated class as one operated by a public school, educational service center, or county board of developmental disabilities in which 50% of the students are children with disabilities.<sup>42</sup>

## **Remote learning**

The act permits certain public schools (see below) that have not otherwise been approved to use a “blended” learning model under continuing law for the 2020-2021 school year to adopt a plan to provide instruction using a “remote” learning model for that year.

The plan must include:

1. A description of how student instructional needs will be determined and documented;
2. The method for determining competency, granting credit, and promoting students to a higher grade level;
3. The school’s attendance requirements, including how the school will document participation in learning opportunities;
4. A statement describing how student progress will be monitored;
5. A description as to how equitable access to quality instruction will be ensured; and
6. A description of the professional development activities that will be offered to teachers.

The act’s provision specifically applies to a school district, community school that is not an internet- or computer-based community school (e-school), or a STEM school that has not been approved to use a blended learning model under continuing law for the 2020-2021 school year on June 19, 2020. A school must submit its plan to the Department by July 31, 2020, but the act also specifies that the plan is not subject to the approval of the Department. Further, the act specifies that a district or school that implements a plan must be considered to have

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<sup>41</sup> Section 16 of H.B. 197 of the 133<sup>rd</sup> General Assembly, amended in Sections 5 and 6 of the act.

<sup>42</sup> R.C. 3323.10.



complied with any requirements otherwise prescribed under continuing law regarding a minimum number of school hours and state funding for the 2020-2021 school year. Finally, it specifies that a student who receives instruction under the plan must not be counted as more than “1.0” full-time equivalent student for state funding purposes.<sup>43</sup>

Under continuing law, “blended learning” means “the delivery of instruction in a combination of time in a supervised physical location away from home and online delivery whereby the student has some element of control over time, place, path, or pace of learning.”<sup>44</sup>

### **Teacher subject area, grade band flexibility**

The act permits a school district superintendent to employ or reassign a licensed teacher to teach a subject area or grade level for which the teacher is not licensed for the 2020-2021 school year, as long as the teacher’s licensure grade band is within two grade levels of the grade to be taught, and the teacher has three or more years teaching experience.<sup>45</sup>

Generally, a teacher employed by a school district must be properly licensed by the State Board for the grade band or subject area taught.<sup>46</sup>

### **Community school governing authority membership**

The act permits a person to serve on the governing authority of more than five start-up community schools, as long as:

1. The person serves in a volunteer capacity on every governing authority and receives no compensation related to that service from any governing authority; and
2. For any school that has an operator, that operator is a nonprofit organization.

Otherwise, under continuing law, a person may not simultaneously serve on the governing authority of more than five start-up community schools.<sup>47</sup>

### **Storm shelters**

The act extends from September 15, 2020, to November 30, 2022, the existing moratorium on the building code requirement for storm shelters in school buildings operated by a public or private school or in any such school building undergoing or about to undergo construction, alteration, repair, or maintenance financed prior to the end of the moratorium.<sup>48</sup>

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<sup>43</sup> Section 16.

<sup>44</sup> R.C. 3301.079 and 3302.41, neither in the act.

<sup>45</sup> Section 17.

<sup>46</sup> R.C. 3319.074, 3319.30, and 3319.36, none in the act. See also O.A.C. 3301-35-05.

<sup>47</sup> R.C. 3314.02(E).

<sup>48</sup> R.C. 3781.1010.

## Online school bus driver training

The act requires the Department of Education to develop an online training program to satisfy the classroom portion of pre-service and annual in-service training for school bus driver certification for the 2020-2021 school year. It also specifies, however, that the on-the-bus training for drivers must continue to be completed in person.<sup>49</sup>

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### HISTORY

Action	Date
Introduced	03-25-19
Reported, H. Primary & Secondary Education	06-27-19
Passed House (61-31)	11-13-19
Reported, S. Education	06-10-20
Passed Senate (32-0)	06-10-20
House concurred in Senate amendments (90-3)	06-11-20

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<sup>49</sup> Section 15.