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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

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Office

**S.B. 358**  
**(1\_133\_3062-7 with**  
**AM3481)**  
**133<sup>rd</sup> General Assembly**

## **Fiscal Note & Local Impact Statement**

[Click here for S.B. 358's Bill Analysis](#)

**Version:** In Senate Education

**Primary Sponsors:** Sens. Fedor and Manning

**Local Impact Statement Procedure Required:** Yes

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### **Highlights**

- Under the bill's safe harbor provision on report card ratings, some school districts and schools would not bear the expense of potentially costly sanctions or penalties to which they may otherwise have been subject. Although, other districts and schools under sanction would not have the opportunity for relief from such sanctions.
- District administrative costs may decrease due to more flexibility regarding school employee evaluations.
- The bill's changes to eligibility for first-time, performance-based Educational Choice (EdChoice) scholarships for the 2021-2022 school year may result in decreased deductions from districts' foundation aid due to fewer first-time scholarship awards. However, the districts' expenses may increase to educate public students that otherwise would have taken a scholarship to attend a nonpublic school.

### **Detailed Analysis**

In general, the bill extends various provisions of law enacted in response to the COVID-19 pandemic and ordered school closure during the 2019-2020 school year to cover the 2020-2021 school year. These provisions involve end-of-course examinations, safe harbor provisions on report cards and other accountability measures, and school employee evaluations. The bill also modifies eligibility for first-time performance-based Educational Choice (EdChoice) scholarships for the 2021-2022 school year. The bill declares an emergency so it will go into immediate effect.

## **Safe harbor provisions**

### **Report cards**

The bill prohibits the Ohio Department of Education (ODE) from publishing state report card ratings and assigning overall or component letter grades on the state report cards for the 2020-2021 school year and prohibits any report card ratings for this school year from being considered in determining whether a district or school is subject to sanctions or penalties. Although, while the bill prohibits the publishing of ratings and assignment of overall and component letter grades, it specifies that ODE is still required to report any performance data that it has for schools and districts by September 15 each of those years, as under current law. H.B. 166 appropriates \$7.6 million from the GRF in FY 2021 for the administration of the state's accountability system and report cards, the majority of which is used to contract with SAS Institute, Inc. for the production of value-added reports.

Effectively, until the release of 2022-2023 report cards, 2018-2019 will be the most recent school year used for provisions and programs dependent on report card grades (while the report cards resume for the 2021-2022 school year, the bill freezes sanctions through the 2022-2023 school year). Thus, the bill prevents some schools and districts from beginning to be subject to potentially costly state sanctions for low performance, including the creation of academic distress commissions (ADCs), state interventions for school improvement purposes, designation of buildings for the EdChoice Scholarship Program, locations of start-up community schools, community school closure provisions, community school restrictions with respect to sponsor changes, and other school restructuring requirements. On the other hand, districts and schools that were on track to improve their report card grades may be subject to such sanctions longer than they otherwise would have.

### **Third-grade reading guarantee, graduation, and other adjustments**

In addition to safe harbor from report card-related sanctions, the bill prohibits schools from retaining a student in the third grade under the third-grade reading guarantee based on reading performance in the 2020-2021 school year unless the principal of the student's school and the student's reading teacher agree that the student is reading below grade level and not prepared to be promoted to fourth grade. Similarly, until September 30, 2021, the bill requires schools and districts to grant a diploma to any student in the twelfth grade or who was on track to graduate this year (regardless of grade) but has not completed the requirements as long as the student's principal, in consultation with teachers and counselors, determines that the student has successfully completed the high school curriculum or the student's individualized education program.

### **Community school sponsors**

The bill prohibits ODE from issuing any community school sponsor ratings for the 2020-2021 school year, extending a provision in effect for the 2019-2020 school year. Additionally, the bill creates a safe harbor period from sponsor penalties and sanctions based on the absence of ratings for the 2019-2020 and 2020-2021 school years. Instead, ratings from previous and subsequent years will be considered.

This may prevent some sponsors, which include school districts, educational service centers (ESCs), and other nonprofit organizations, who would otherwise have received ratings of "ineffective" or "poor" for the 2019-2020 or 2020-2021 school years from having sponsorship authority revoked. Sponsorship authority is revoked, subject to an available appeals process, for sponsors that receive a poor rating or three consecutive ineffective ratings. Since no schools will

lose sponsorship authority due to ratings for the 2019-2020 and 2020-2021 school years, the administrative costs of ODE's Office of School Sponsorship, may decrease. The Office of School Sponsorship is authorized to take over sponsorship for a school having a sponsor rated as "poor" or "ineffective" for three consecutive years until the school finds a new sponsor. The Office's operations are financed by a sponsorship fee of up to 3% of each sponsored school's operating revenue.

On the other hand, some sponsors may not be able to newly take advantage of certain incentives for "effective" or "exemplary" ratings. For example, entities with an overall rating of "exemplary" or "effective" for at least three consecutive years are evaluated by ODE once every three years, instead of annually. Entities with an overall rating of "exemplary" for at least two consecutive years may sponsor an unlimited number of schools with no territorial restrictions and also receive exemptions from certain requirements on contracts with ODE and the sponsored schools.

## **School employee evaluations**

The bill may reduce administrative workload or costs for school districts by extending for an additional year temporary provisions of current law that, in general, waive certain requirements with respect to school employee evaluations. Notably, the bill:

- Permits a district board to elect not to conduct evaluations of district employees, including teachers, school counselors, administrators, or a superintendent, for the 2020-2021 school year, if the district board determines that it would be impossible or impracticable to do so, without penalty to the employee for purposes of reemployment. A similar provision was enacted in H.B. 197 for the 2019-2020 school year.
- Extends to the 2021-2022 school year a prohibition against using value-added data, other high-quality student data, any other metric used to evaluate positive student outcomes, or any other academic growth data to measure student learning attributable to a teacher, principal, or school counselor while conducting performance evaluations.
- Extends to the 2020-2021 school year a separate authorization for a district board to complete a principal's performance evaluation without a student growth measure.
- Extends the authority for a school district that did not participate in the teacher evaluation pilot program established for the 2019-2020 school year and that completes evaluations for the 2020-2021 school year without a student growth measure to continue evaluating teachers who are on a two- or three-year evaluation cycle on their longer evaluation cycles. These teachers must remain at the same point in their evaluation cycle and retain the same evaluation rating for the 2021-2022 school year as in the 2019-2020 school year, in addition to the 2020-2021 school year under current law. Typically, teachers on these longer evaluation cycles are required to have student growth measures. Without them, teachers evaluated less frequently under current law would revert to a full evaluation in the following school year, meaning that a district otherwise would need to evaluate all of their teachers in the 2021-2022 school year.

## **EdChoice Scholarship Program**

### **Eligibility changes**

The performance-based Educational Choice (“EdChoice”) Scholarship Program funds scholarships for students, other than those residing in the Cleveland Municipal School District, who attend or would otherwise attend a traditional school building that meets one of a number of conditions related to low performance on the state report card. Students use the scholarships to attend participating chartered nonpublic schools. The amount awarded under the program is the lesser of the actual tuition charges of the school or the maximum scholarship award. The maximum scholarship award is \$4,650 for students in grades K-8 and \$6,000 for students in grades 9-12. In general, scholarship students are counted in the resident district’s student count in order to calculate state aid. Funding for these scholarships is deducted from the state foundation aid of the student’s resident school district.

The bill limits eligibility for first-time scholarships for the 2021-2022 school year (FY 2022) to students attending a building that was designated in FY 2020 (517 buildings), provided that the following buildings are removed from the list for FY 2022:

- The building was permanently closed prior to the 2021-2022 school year (seven buildings).
- The building met the conditions to be removed from the eligibility list for FY 2021 (13 buildings).
- The building meets the conditions to be removed based on performance index rankings and letter grades for the 2016-2017, 2017-2018, and 2018-2019 school years. The bill requires ODE to calculate performance index rankings and letter grades for the 2016-2017 school year, which is covered under the state’s “safe harbor” policy under current law, for this purpose only. The number of buildings removed from the list based on this condition will depend on the recomputations performed by ODE.

Overall, there will be as many as 497 buildings in 156 school districts in which students may be eligible for first-time scholarships (517 buildings designated for FY 2020 – seven closed buildings – 13 buildings removed from FY 2021 designation list). The bill permits a student who received a scholarship in the 2020-2021 school year to continue to do so in the 2021-2022 school year.

These provisions may decrease the number of scholarships awarded in FY 2022 relative to current law, under which students from any of the 1,227 buildings in 426 school districts currently designated for the EdChoice Scholarship Program would be eligible for a scholarship (the list of designated buildings is presumed to be the same for the 2021-2022 school year as in the 2020-2021 school year due to the safe harbor provisions). As a result, the bill may decrease the amount deducted from a district’s state foundation aid. Also, school district expenditures may increase to educate public students that otherwise would have taken a scholarship to attend a nonpublic school. As a point of reference, in FY 2020, ODE awarded roughly 30,000 performance-based EdChoice scholarships, totaling about \$149 million.

## **Testing administration**

### **End-of-course examinations**

H.B. 164 of the 133<sup>rd</sup> General Assembly generally allowed students to substitute a final course grade for an end-of-course examination grade in the event the examination for the

2019-2020 school year was cancelled due to the COVID-19 pandemic. The bill extends this provision to cover the 2020-2021 school year and qualifying students, defined as meeting the following criteria:

- The student is being quarantined;
- The student cannot attend school or another testing location outside the home because the student or a family member is medically compromised;
- The student’s geographic area is subject to an order requiring all persons remain in their residence; or
- The student is receiving remote instruction up to and through an assessment deadline and the assessment cannot be administered remotely.

Specifically, students scheduled to take or retake an end-of-course examination in the 2020-2021 school year, but do not do so because the administration of that examination is cancelled, or qualifying students, may use a final course grade to satisfy graduation requirements prescribed under continuing law in lieu of an examination score. The bill allows students to take the relevant end-of-course examination in a subsequent year if they so choose. Thus, the bill may increase a school district or other public school’s administrative workload to inform and advise students of their options. It also may decrease state test costs by reducing the number of students that take or retake in a subsequent school year an end-of-course examination for a course taken during the 2020-2021 school year. The table below shows the bill’s designated achievement levels for each corresponding course grade. The first column includes any corresponding letter grade for each letter (e.g., “A” includes both “A-” and “A+,” and so on).

2019-2020 and 2020-2021 School Year Final Course Grade and End-of-Course Examination Equivalent Achievement Levels	
Final Course Grade	End-of-Course Examination Performance Level Equivalent
A	Advanced
B	Accelerated
C	Proficient
D	Basic
F	Limited

Any grades “C” or higher are deemed equivalent to a competency score for purposes of graduation requirements. For pass-fail courses, the bill specifies that failure is equivalent to an “F” grade and limited level of skill, while passing is equivalent to a level of skill that the student’s district or school determines, though a pass designation is equivalent to a competency score.

## **Testing exemptions**

The bill prohibits students from being excluded from their district's 2021-2022 school year enrollment for funding purposes or deemed ineligible for any scholarships solely because the student was not administered an assessment. It also exempts school districts and other public schools from penalties for not administering assessments to qualifying students in the fall of the 2020-2021 school year. There are no specified penalties under current law for failing to administer tests. Thus, any sanctions appear to be at the discretion of ODE.

## **Academic distress commissions**

The bill dissolves any academic distress commission (ADC) for a school district that received a "D" or higher report card grade for the 2018-2019 school year and requires the ADC to transition operational, managerial, and instructional control back to district board of education. This provision applies to the Lorain City School District. Under the bill's transition period, a district remains under the ADC's control until May 30, 2021. Additionally, ODE is required to pay the remainder of the chief executive officer's contract upon the ADC's dissolution. The chief executive officer (CEO) compensation for each ADC is approximately \$350,000 annually. ADC CEO compensation is supported by the state through an earmark of GRF line item 200550, Foundation Funding, in the ODE budget.

The bill also requires ODE to establish a process by which a school district subject to an ADC may submit a proposal to transition out of the ADC's control. ODE's administrative costs may increase to create the transition process and support a committee established by the bill, consisting of the Governor and the chairpersons of the House and Senate primary and secondary education committees, to review proposals. Districts choosing this option must describe their academic progress and provide a rationale for the requested transition. The East Cleveland City School District and Youngstown City School District are the other two districts subject to an ADC. The bill requires the committee to review the proposal and permits it to use additional data from the 2019-2020 school year state report cards in its review. Final approval of the transition proposal rests with the Superintendent of Public Instruction if the committee votes to recommend the transition. If approval is granted, the ADC must transition operational, managerial, and instructional control back to the district by June 30, 2021. If East Cleveland or Youngstown receive approval to transition out of their ADC's control, state expenditures may decrease as the state will no longer need to pay the salary of the CEO (there is no requirement for ODE pay the remainder of the CEO's salary under this transition process).

The Lorain City School District may have higher revenues and expenditures under the bill (as will East Cleveland and Youngstown if they successfully request a transition), as fewer students in the district may qualify for scholarships under the traditional EdChoice Scholarship Program. If a student receives a scholarship, the district does not incur the expense of educating the student and funding is deducted from the district's state aid.

## **Community school transportation**

For the 2020-2021 school year, the bill permits the governing authority of a community school to submit written notification to district boards of education that it will assume responsibility to provide or arrange transportation for the community school's students who reside in that district. The notification must be submitted to the district board by December 31, 2020 (instead of January 1 of the preceding school year as otherwise required under continuing law). The bill specifies that

these community schools are required to receive transportation funding from ODE for the entire school year. Community school transportation payments are funded by deductions from the state foundation aid of the student's resident school district. If additional schools opt to assume transportation responsibility as a result of this provision, payments to the schools and as well as deductions of school district foundation aid will increase, depending on how many community schools elect to transport students on their own. For reference, in FY 2020, 20 community schools received a cumulative total of \$2.3 million to provide transportation to students.

## **Health screenings for kindergarteners and first graders**

Generally, school districts are required to conduct health screenings on all students who are enrolled for the first time in either kindergarten or first grade by November 1 of each school year. The screenings are intended to detect any hearing, vision, speech, or communication problems, other health or medical issues, and to detect potential developmental disabilities.

The bill allows for limited exceptions to this requirement for the 2020-2021 school year by prohibiting school districts and other public schools from being penalized for failing to complete the screening by the required date if a student is in quarantine, cannot attend school due to either being medically compromised or living with someone who is medically compromised, lives in an area of the state under a health order requiring all persons to remain in their residences, or if the student is receiving instruction through remote learning. The screenings must be conducted when it is safe to do so or at the request of the student's parent or guardian. Similar to testing exemptions mentioned above, there are no penalties specified under current law for failing to administer the screenings. As such, the scope of any penalties or enforcement is uncertain but likely to be minimal as the requirement they be conducted when it is safe affords school districts more time to conduct them.

## **Columbus City School District pilot program**

The bill repeals a pilot program for schools in the Columbus City School District that rank in the bottom 5% of the Performance Index for three or more consecutive years. Generally, the program permits parents or guardians of 50% of the students enrolled in the school to petition the district board of education to reopen the school as a community school, replace at least 70% of the school's personnel related to the building's poor performance, transfer operation of the school to ODE, contract with another district or a nonprofit or for-profit entity to operate the school, or any other school restructuring that makes fundamental reforms to staffing or governance. Current law requires the board to implement the requested restructuring if the petition is certified. The program has not been used by parents or guardians.

## **Public meetings and hearings**

H.B. 197 authorizes public bodies to hold public meetings and hearings by electronic means, including teleconference or video conference, during the period of the COVID-19 emergency, or until December 1, 2020 if the period continues beyond that date. The bill extends this authorization for the duration of the emergency or until September 30, 2021. There appears to be no fiscal impact to extending the authority to hold public meetings and hearings by electronic means.