Jennifer Stump *Legislative Service Commission*

Am. Sub. H.B. 276

126th General Assembly
(As Passed by the General Assembly)

Reps. **J. Stewart, Miller, Carano, Hartnett, C. Evans, Perry, Allen, Taylor, Peterson, Setzer, Williams, Garrison, Chandler, Woodard, Barrett, Aslanides, Beatty, Brown, DeBose, Domenick, Fende, Flowers, Harwood, Mason, Mitchell, Otterman, Sayre, G. Smith, D. Stewart, Strahorn, Yates, Yuko**

Sens. **Padgett, Roberts**

Effective date: *

ACT SUMMARY

Anti-bullying policies

- Requires each school district board of education and each community school governing authority to adopt a policy prohibiting harassment, intimidation, or bullying of any student on school property or at a school-sponsored activity.
- Requires the State Board of Education to develop a model policy prohibiting student harassment, intimidation, or bullying.
- Requires the Auditor of State to note in the audit report of each school district and community school whether the district or school has adopted an anti-bullying policy.
- Provides school employees, students, and volunteers with qualified civil immunity for damages arising from reporting an incident of student harassment, intimidation, or bullying.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Authorizes school districts and community schools to form bullying prevention initiatives and requires them to provide training and education on student harassment, intimidation, or bullying if funds are appropriated for that purpose.

- Requires school districts, community schools, and educational service centers to provide elementary school employees with training in violence and substance abuse prevention and positive youth development (in addition to child abuse prevention), and requires elementary employees to complete the training every five years.

Achievement tests and diagnostic assessments

- Eliminates the summer administration of the third grade reading achievement test.

- Allows students who otherwise must pass the former ninth grade proficiency tests for high school graduation but who did not fulfill the curriculum requirements for a diploma by September 15, 2006, to meet the graduation testing requirement by passing any combination of proficiency tests and Ohio Graduation Tests in the five tested subjects.

- Revises the time period in which school districts and community schools must administer the kindergarten readiness assessment to: between four weeks prior to the start of school and October 1.

Student information

- Provides for the assignment of EMIS student data verification codes for children receiving early intervention services from the Help Me Grow program.

- Permits the Department of Education to have access to personally identifiable information about a student if the Department needs it to (1) notify the school district or school of threats or descriptions of harm in the student's response to an achievement test question, (2) verify the accuracy of the student's achievement test score, or (3) determine whether the student satisfies the alternative conditions for a diploma.

Community schools

- Expands exceptions to the community school caps by expanding the definition of community school "operator" to include (1) a nonprofit organization that provides programmatic oversight and support and retains the right to terminate its affiliation with the school for failure to meet quality standards and (2) individuals who manage the school's daily operations under contract with the school's governing authority.

- Allows community schools established outside of the caps to be managed by operators not currently managing schools in Ohio.

- Permits a school district to include the academic performance data of a community school located in the district on the district report card if the district either (1) leases a building to the school or (2) has an agreement with the school to endorse each other's programs.

- Specifies a procedure for a parent to waive entitlement to a computer from an Internet- or computer-based community school.

Other provisions

- Repeals the authorization for teachers to temporarily teach a subject area or grade for which they are not licensed.

- Permits a school district to renew the contract of a director, supervisor, or coach of a pupil-activity program who is not a licensed educator without first offering that position to a licensed educator.

- Revises the requirements for textbook publishers to file the wholesale prices of electronic files for translating textbooks into Braille and other formats for the blind and visually impaired.

- Permits temporary deficits in school district special funds under certain conditions.

- Permits the Superintendent of Public Instruction to waive the minimum number of school days in the 2006-2007 school year for a joint vocational school district that experienced delays in a state-assisted construction project.

- Permits the boards of trustees of Rio Grande Community College and the University of Rio Grande to enter into a contract to have the university operate the community college and to employ a joint president.

TABLE OF CONTENTS

CONTENT AND OPERATION

Policies to prohibit harassment, intimidation, or bullying

(R.C. 3313.666(A), (B), and (C) and 3314.03(A)(11)(d))

The act directs the board of education of each city, local, exempted village, and joint vocational school district and the governing authority of each community (charter) school to adopt a policy prohibiting student harassment, intimidation, or bullying. The board or governing authority must develop the policy in consultation with parents, school employees, school volunteers, students, and community members.

The policy must prohibit the harassment, intimidation, or bullying of any student on school property or at a school-sponsored activity. It also must define

the term "harassment, intimidation, or bullying" in a manner that includes the definition prescribed in the act. In this regard, the act defines that term as an intentional written, verbal, or physical act that a student has exhibited toward another particular student more than once and the behavior both (1) causes mental or physical harm to the other student, and (2) is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or abusive educational environment for the other student.

Each policy also must include the following additional items:

(1) A procedure for reporting prohibited incidents;

(2) A requirement that school personnel report prohibited incidents of which they are aware to the school principal or other administrator designated by the principal;

(3) A requirement that the parents or guardians of a student involved in a prohibited incident be notified and, to the extent permitted by state and federal law governing student privacy, have access to any written reports pertaining to the prohibited incident (see **COMMENT** 1);

(4) Procedures for documenting, investigating, and responding to a reported incident;

(5) A requirement that the district or community school administration provide semiannual written summaries of all reported incidents to the president of the district board of education or community school governing authority, and post them on the district's or school's web site (if it has a web site);

(6) A strategy for protecting a victim from additional harassment and from retaliation following a report; and

(7) The disciplinary procedure for a student who is guilty of harassment, intimidation, or bullying. The act explicitly prohibits the disciplinary procedure from infringing on a student's rights under the First Amendment to the U.S. Constitution, which include freedom of speech and the free exercise of religion.

These items form a framework for districts and community schools to use in developing their policies. The policy must be included in student handbooks and in publications that set forth the standards of conduct for schools and students. Employee training materials must also include information on the policy.

State Board of Education's model policy

(R.C. 3301.22)

To assist school districts and community schools in developing their own policies, the act requires the State Board of Education to develop a model policy to prohibit harassment, intimidation, or bullying in schools. The State Board must issue this policy within six months after the act's effective date. (See **COMMENT** 2.)

Auditor of State identification of harassment policy

(R.C. 117.53; Section 3)

Beginning one year after its effective date, the act requires the Auditor of State, when conducting an audit of a school district or community school, to identify whether the district or school has adopted an anti-harassment policy. This determination must be recorded in the audit report. The Auditor of State may not prescribe the content or operation of the policy.

Immunity from civil liability

(R.C. 3313.666(D), (E), and (F))

The act provides that a school employee, student, or volunteer is immune from civil liability for damages that arise from the reporting of an incident of harassment, intimidation, or bullying. A person qualifies for immunity only if the person reports the incident promptly in good faith and in compliance with the procedures specified in the district's policy. Although the act states that the requirement to adopt anti-harassment policies does not create a new cause of action or substantive legal right, it further specifies that, except for the qualified immunity provided to persons who report incidents, nothing in the act's provisions prohibits a victim of harassment, intimidation, or bullying from seeking redress for harm under statutory or common law.

Bullying prevention initiatives

(R.C. 3313.667 and 3314.03(A)(11)(d))

The act authorizes school districts and community schools to form bullying prevention task forces, programs, and other initiatives involving volunteers, parents, law enforcement, and community members. In addition, to the extent that state or federal funds are appropriated for these purposes, school districts and community schools are required (1) to provide training, workshops, or courses on the district's bullying policy to school employees and volunteers who have direct

contact with students, which must apply toward any state- or district-mandated continuing education requirements, and (2) to develop a process for educating students about the policy. Finally, the act states that these authorizations and requirements do not create a new cause of action or substantive legal right for any person.

Training in abuse and violence prevention

(R.C. 3319.073)

Continuing law requires school districts, community schools, and educational service centers to develop a program of in-service training in child abuse prevention for all of their elementary school teachers, administrators, nurses, counselors, and school psychologists. Prior to the act, these employees had to complete only four hours of the training, within three years of beginning their employment. That is, prior law required these employees to complete the training only once.

The act expands the required training to also include the prevention of violence and substance abuse and the promotion of positive youth development. It also requires new employees to complete the training within two years of starting employment, rather than three years, and every five years thereafter. Employees hired prior to the act's effective date must take the expanded training within two years of that date and every five years thereafter.

Elimination of summer third grade reading test

(R.C. 3301.0710, 3301.0711, and 3313.608)

A provision commonly known as the "third grade reading guarantee" aims to ensure that students are reading at grade level by the end of third grade. School districts and community schools must provide intervention services to students who are reading below grade level in first or second grade. They also must offer summer remediation to students who have not attained a *proficient* score on the third grade reading achievement test by the end of third grade. Furthermore, for students who score in the *limited* (or lowest) range on the test, each district or school must either: (1) promote the student to fourth grade if the student's principal and reading teacher agree, based upon other evaluations of the student's reading skills, that the student is academically prepared for fourth grade, (2) promote the student to fourth grade but provide intensive intervention services in that grade, or (3) retain the student in third grade.

Previously, each student had three opportunities to take the third grade reading achievement test before the district or school had to decide whether to

promote or retain the student. The test was administered (1) once before December 31, (2) once in the spring, and (3) once during the summer after remediation. The act eliminates the summer administration of the reading test, which was the only state test administered in summer. However, students who do not pass the test during the school year must still be offered remediation over the summer after third grade. Elimination of the summer test follows the General Assembly's 2005 decision to move the elementary achievement tests from mid-March to early May, beginning with the 2006-2007 school year.[1]

Graduation testing requirements for students subject to the ninth grade tests

(R.C. 3313.614)

The Class of 2007 is the first group of students that must pass the five Ohio Graduation Tests (OGT) to receive a high school diploma from a school district, community school, or chartered nonpublic school. Students in prior classes (*i.e.*, students who entered ninth grade prior to July 1, 2003) generally must pass the five ninth grade proficiency tests to graduate. But, under prior law, those students could pass the ninth grade proficiency tests to qualify for a diploma only as long as they fulfilled all curriculum requirements for graduation before September 15, 2006. Students who did not complete their curriculum requirements by that date had to pass all five OGT to get a diploma, even if they previously passed one or more of the proficiency tests.

The act eliminates the date restriction for completion of the required curriculum for students who entered ninth grade prior to July 1, 2003. Therefore, those students may meet the testing requirements for a diploma by passing any combination of proficiency tests and OGT in the five subjects (reading, writing, math, science, and social studies or citizenship), regardless of when they complete the required curriculum. For example, a student in the Class of 2005 who dropped out of school after tenth grade could return in 2007 to finish the required coursework and not lose credit for any ninth grade proficiency tests the student passed before dropping out. However, the act retains the scheduled September 15, 2008, cut-off of the ninth grade tests. If a student who entered ninth grade prior to July 1, 2003, has not passed a ninth grade proficiency test by September 15, 2008, the student must pass the OGT in the same subject instead.

[1] *R.C. 3301.0710, as amended by Am. Sub. H.B. 66 of the 126th General Assembly, the 2005-2007 biennial budget act.*

Administration of kindergarten readiness assessment

(R.C. 3301.0715)

Under continuing law, school districts and community schools must administer a state-developed kindergarten readiness assessment to each kindergartener. The assessment is a diagnostic instrument designed to provide feedback on a student's reading, writing, and math skills based on observations of the student's performance in individual and small-group activities, such as making a storyboard or arranging numbers in order.

The act establishes a more fixed time period for administering the readiness assessment. Specifically, kindergartners must take the assessment between four weeks prior to the start of school and October 1. Prior law directed districts and schools to give the assessment no later than six weeks after the first day of school. The act retains the provision of law that assessment results cannot be used to prohibit a child from enrolling in kindergarten.

Data verifications codes for children in the "Help Me Grow" program

(R.C. 3301.0714(D)(2), 3301.0723, 3314.17, and 3701.62)

The Ohio Department of Health receives federal education funding to provide intervention services to developmentally delayed children who are under three years old. These children are too young to receive special education and related services from a public school under the federal Individuals with Disabilities Education Act (IDEA) and the state law implementing the state's obligation under that act.[2] This early intervention program is called "Help Me Grow."[3]

In order to track the progress of the children enrolled in Help Me Grow after they enter the public schools as special education students under IDEA, the U.S. Department of Education is requiring that both the Ohio Department of Education and the Ohio Department of Health use the same student tracking number for those students. Accordingly, the act requires the Ohio Director of Health to request a student data verification code for each Help Me Grow child who is about to begin receiving IDEA services. The Director must request that code from the independent contractor engaged by the Ohio Department of Education to create and maintain those codes for school districts and community

[2] *20 U.S.C. 1400 et seq.; R.C. Chapter 3323.*

[3] *20 U.S.C. 1431 to 1445; R.C. 3701.61.*

schools for their enrolled students.[4] The contractor must provide that code to the Director.

The Director is then required to submit the code to the public school at which the student will be receiving special education and related services under IDEA.[5] A school that receives a code from the Director must use it, and may not assign another code, to report data relative to that child. Finally, the act prohibits the Director and each school that receives a child's data verification code from releasing that code to any person except as provided by law (see **COMMENT** 1), and it specifies that any document the Director holds that contains both a student's name or other personally identifiable information and the student's data verification code is not a public record.

Department of Education access to personally identifiable student information

(R.C. 3301.0716)

Continuing law generally prohibits school districts and community schools from reporting a student's name, address, social security number, or other personally identifiable information about the student to the Ohio Department of Education. That information generally may be reported only to authorized employees responsible for reporting data through the Education Management Information System (EMIS) or to companies hired by the Department to score the achievement tests.[6]

The act creates three exceptions to the general prohibition against sharing personally identifiable student information with the Department. Specifically, the Department may have access to that information in the following circumstances:

(1) A test scoring company has notified the Department that the student's written response to a question on a state achievement test included threats or descriptions of harm to the student or another person and the Department needs to

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[4] *Under that system, each student receives only one lifetime code number that follows the student from school to school.*

[5] *To facilitate this transfer of the child's code to the public school, the act requires the Director of Health to request from the parent, guardian, or custodian of the child, or from any other person who is authorized by law to make decisions regarding the child's education, the name and address of the public school in which the child will be enrolled for special education and related services.*

[6] *R.C. 3301.0714(D) and 3314.17.*

identify the student in order to alert the student's school district or school of the potential for harm;

(2) The student's district or school asks the Department to verify the accuracy of the student's score on an achievement test; or

(3) The student has passed all but one of the Ohio Graduation Tests (OGT) and the Department must determine whether the student satisfies the alternative requirements for a high school diploma.[7]

Community schools

Exceptions to the statewide caps

(R.C. 3314.014)

Background. There are two caps on the number of community schools that may be established statewide. The first cap applies to start-up schools and conversion Internet- or computer-based schools ("e-schools") sponsored by the school districts in which they are located. The second cap applies to start-up schools sponsored by other entities. Each cap is equal to 30 more than the number of schools to which the cap applies that were open as of May 1, 2005. Both caps are set to expire July 1, 2007.[8]

However, a new community school may open after the statewide cap to which it would otherwise be subject has been reached if the school's governing authority enters into a contract with an operator, which is an organization that manages the school's daily operations under a contract with the school's governing authority. Each operator may manage one school in excess of the cap for each school it manages on the date the cap is reached, excluding conversion community schools that are not e-schools, that has a performance rating of continuous

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[7] *Under continuing law, to graduate from high school, a student must (1) successfully complete the curriculum required by the student's high school or the student's individualized education program (IEP) and (2) pass all five OGT. If a student completes the curriculum and passes four of the OGT but fails the fifth test by ten points or less, the student may still graduate if the student (1) has a 97% attendance rate in high school, (2) has no high school expulsions, (3) has at least a 2.5 grade point average in the subject area of the failed test, (4) has attended intervention programs in the subject area of the failed test, and (5) is recommended for graduation by the high school principal and each of the student's teachers in the subject area of the failed test. (R.C. 3313.615, not in the act.)*

[8] *R.C. 3314.013(A)(4) and (5), not in the act.*

improvement or better. The latter provision effectively limits proposed new community schools to hiring in-state operators since those ratings do not apply to out-of-state schools.

The act. The act makes two changes that expand the exceptions to the caps. First, it allows out-of-state operators to manage community schools established after the caps are reached. That is, a proposed new community school could be established outside the caps if it contracts with an out-of-state operator. As with in-state operators, an out-of-state operator is limited to managing one school in excess of the applicable cap for each school it manages in another state on the date that cap is reached that performs comparably to an Ohio school in continuous improvement or better, as determined by the Department of Education. The act also permits in-state operators to count schools they manage in other states toward the number of new community schools in Ohio that they may manage.

Second, the act expands the definition of operator to include (1) an *individual* who manages a school's daily operations under a contract with the school's governing authority or (2) a nonprofit organization that provides programmatic oversight and support to a school and that retains the right to terminate its affiliation with the school if the school fails to meet the organization's quality standards. Therefore, a community school may open above the caps if the school's governing authority has a contract with one of these additional types of operators.

However, given that the caps are scheduled to expire July 1, 2007, it is not clear what legal significance these changes have. It also is not certain that these new exceptions would apply if the General Assembly were to revise and extend the caps past July 1, 2007.

Inclusion of community school data on school district report cards

(R.C. 3302.03(C)(6)(b))

Under the act, a school district may elect to have academic performance data from a community school located in the district combined with comparable district data when calculating the district's performance on its report card if the district (1) leases a building to the community school or (2) enters into an agreement with the community school to endorse each other's programs. If the district elects to combine the data, it must annually file a copy of the lease or endorsement agreement with the Department of Education.

Entitlement to computer from Internet community school

(R.C. 3314.22; conforming change in R.C. 3314.08(N))

Continuing law provides that each child enrolled in an Internet- or computer-based community school (e-school) is entitled to a computer supplied by the school. It also provides that if more than one child living in a single residence is enrolled in the school, at the option of the parent, the school may supply less than one computer per child, as long as at least one computer is supplied to the residence. The parent may amend the decision to accept less than one computer per enrolled child anytime during the school year. In that case, the school must, within 30 days of the parent's notice, provide any additional computers requested by the parent, up to one computer for each child enrolled in the school.[9] The wording of the law prior to this act appeared to contemplate a waiver by a student's parent of the entitlement to one computer per child or to any computer at all supplied by the school.

The act establishes an explicit statutory mechanism for a parent to waive the entitlement altogether and thereby receive no computer at all, and for the school to record that waiver. Under the act, both the parent and school must set forth the waiver in writing, with both parties attesting that there is a computer available in the child's residence with sufficient hardware, software, programming, and connectivity so that the child may fully participate in all of the learning opportunities offered to the child by the school. The parent may amend the waiver at any time. If the parent elects to receive a computer, the school must supply it within 30 days.

The school and the parent must retain a copy of the waiver. The school also must immediately submit a copy of the waiver to the Department of Education Office of Community Schools. Finally, the school must notify the Office of Community Schools of any parent's decision to amend the waiver.

Teaching outside the scope of an educator license

(repealed R.C. 3319.227)

The act repeals the law that permitted an individual with a valid educator license to teach for up to two years in a subject area or grade outside the scope of the license as long as the teacher worked toward certification in that area or grade during those two years. This authorization did not apply to teachers hired after July 1, 2002, to teach core subject areas in a school that receives federal Title I

[9] *Continuing law also specifies that an e-school may not provide a stipend as a substitute for a computer.*

funds.[10] Core subject areas include English, reading or language arts, math, science, foreign language, civics and government, economics, arts, history, and geography.[11]

The federal No Child Left Behind Act requires *all* public school teachers of core subject areas, whether newly hired or veteran educators, to be "highly qualified." To be highly qualified, a teacher generally must (1) hold a bachelor's degree, (2) be fully certified by the state, and (3) demonstrate competency in each core subject taught.[12] A teacher teaching outside the scope of a license is not considered highly qualified. The repealed provision conflicted with the federal law because it allowed public school teachers hired *prior* to July 1, 2002, or teaching in schools that did not receive Title I funds, to teach core subjects for which they were not licensed.

Renewal of contract to oversee pupil-activity program

(R.C. 3313.53)

School districts may establish "pupil-activity programs," or extracurricular programs, in areas such as "music, language, arts, speech, government, athletics, and any others directly related to the curriculum." Under prior law, districts had to offer positions overseeing pupil-activity programs first to licensed teachers and administrators who are employed by the district and then, if necessary, to licensed educators who are not employed by the district. If a position remains open after this process, the district may offer the position to someone who is not a licensed educator but holds a valid pupil-activity program permit issued by the State Board of Education.

The act allows school districts to *renew* the contract of a director, supervisor, or coach of a pupil-activity program who is not a licensed educator without first offering the position to a licensed educator. Whenever a district is hiring a *new* person to oversee a pupil-activity program, however, it must continue to offer the position to licensed educators before employing a nonlicensed individual. The act retains the laws (1) requiring an individual who is not a licensed educator to maintain a valid pupil-activity program permit issued by the

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[10] Title I is the central program of the federal Elementary and Secondary Education Act of 1965, which was most recently reauthorized by the No Child Left Behind Act. Title I provides federal funds for the educational needs of low-income and other at-risk students.

[11] See R.C. 3319.074, not in the act.

[12] 34 Code of Federal Regulations §§ 200.55 and 200.56.

State Board to qualify for reemployment, (2) requiring that the individual's salary be the same as would be paid to a licensed educator, and (3) limiting the nonlicensed individual's employment contract to one year.

Textbooks for the visually impaired

(R.C. 3329.01)

Prior law required all textbook publishers that sell to Ohio school districts to file with the state the wholesale price of a computer diskette that contains the text of a textbook in the American Standard Code for Information Interchange (ASCII), or other computer language approved by the Superintendent of Public Instruction, for translating the textbook into Braille. The act changes the computer format for which the publishers must file the prices, as follows:

(1) For textbooks published before August 18, 2006, publishers must file the wholesale price of an electronic file with the text of the textbook in rich text format or other approved format for translating the text into Braille.

(2) For textbooks published on or after August 18, 2006, publishers must file the wholesale price of an electronic file that contains the text of the textbook, and all instructional materials offered with the textbook, in the National Instructional Materials Accessibility Standard (NIMAS) code for translating the text into NIMAS-approved formats, including Braille, audio, digital text, or large print, to comply with federal law. August 18, 2006, is the effective date of federal education rules mandating use of NIMAS code.

The act also requires that for textbooks published on or after August 18, 2006, publishers selling to Ohio school districts must send one copy of the electronic file in NIMAS code that contains the text of the textbook and all other instructional materials offered with the textbook at no cost to the National Instructional Materials Access Center. The Center is a central national repository established by the federal Individuals with Disabilities Education Improvement Act of 2004 and is located at the American Printing House for the Blind.

School district special fund deficits

(R.C. 3315.20)

School districts generally are not permitted to incur deficits in their general or special funds. However, sometimes a deficit might occur in one of a district's special funds, resulting in a notation to that effect in an audit report, if near the end of a fiscal year the district requested payment from the Department of Education but the state's central accounting system is temporarily closed down for end-of-the-year tabulations. The act, on the other hand, permits a district to have a deficit

in any of its special funds, but only if (1) the district has a request for payment pending with the state sufficient to cover the amount of the deficit, (2) there is a reasonable likelihood that the payment will be made, and (3) the unspent and unencumbered balance in the district's general fund exceeds the aggregate of deficit amounts in all of the district's special funds. Presumably, this authorization would preclude an audit finding under these circumstances.

Waiver from minimum days for joint vocational school districts

(Section 4)

The act permits the Superintendent of Public Instruction, upon request of the superintendent of a joint vocational school district, to grant the district a waiver from the minimum number of school days required under the Revised Code for the 2006-2007 school year if all of the following conditions apply to the district in that school year:

(1) The school district is participating in the Vocational School Facilities Assistance Program and the Executive Director of the Ohio School Facilities Commission certifies to the Superintendent of Public Instruction that the district's project experienced delays due to unanticipated structural conditions.

(2) The project delays will cause the district to be open for instruction for fewer days or hours than required by the Revised Code.

(3) The district requires its students to engage in activities outside of school that are relevant to the subject areas in which they are missing instruction to offset the reduction in instructional time.

A waiver allows the district to be closed for not more than 11 days in excess of the five days it can be closed for a public calamity.

Rio Grande Community College and the University of Rio Grande

(R.C. 3354.26)

The act permits the boards of trustees of Rio Grande Community College and the University of Rio Grande, which is a private nonprofit corporation that shares the community college's facilities, to enter into a contract providing for the University of Rio Grande to operate the community college. In addition, the community college may have its president also serve as president of the University in accordance with the terms of the contract between the two institutions. The salary, benefits, and other compensation paid to the joint president are the sole responsibility of the community college.

COMMENT

1. State and federal laws prohibit the release of student educational records to most persons, other than educational and law enforcement personnel, unless the student's parent, or the student if at least 18 years old, consents to the release. (R.C. 3319.321 (not in the act) and the federal Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. 1232q.) Student disciplinary records appear to be subject to these laws and in most cases cannot be released without the consent of the student or student's parent.

Case law on this issue, however, is somewhat divided. In 1997, the Supreme Court of Ohio held that student disciplinary records were not educational records under the federal law because they were not academic in nature. Thus, those records, according to the Court, were subject to disclosure under the state Public Records Law.[13] The request for records in that case did not seek information that linked a student to a particular act.[14]

In a related case involving some of the same Ohio parties where personally identifiable information *was* requested, the U.S. District Court for the Southern District of Ohio and the U.S. Court of Appeals for the 6th Circuit held that disciplinary records are educational records under the federal law and may not be released without consent. Accordingly, their release cannot be compelled under the state Public Records Law, since it does not apply to records that may not be released under federal or state law.[15]

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[13] *State ex rel. The Miami Student v. Miami University (1997), 79 Ohio St.3d 168, cert. denied, 522 U.S. 1022 (1997).*

[14] *At least one state appeals court from another state has distinguished the case on those grounds and held that disciplinary records that do link a student to a particular act may not be released under FERPA (Publishing Corp. v. University of North Carolina, 128 N.C. App. 534, 540-42 (1998)). Also, one dissenting justice in the Ohio case pointed out that a Georgia decision relied on by the majority predates the 1995 amendments to rules implementing FERPA. According to the dissent, the 1995 rules "clarify" that disciplinary records are always education records (79 Ohio St. at 175-75, Lundberg Stratton, J., dissenting).*

[15] *United States v. Miami University, 91 F. Supp.2d 1132 (S.D. Ohio 2000), 292 F.3d 797 (6th Cir. 2002). In that case, the Appeals Court noted that the federal district court was not bound by the interpretation of federal law by the Ohio Supreme Court. The federal case originally was brought by the U. S. Department of Education, which had advised two universities that disciplinary records are educational records and that they could lose federal funds if they released records on the basis of the Ohio Supreme Court's decision.*

2. On October 12, 2004, the State Board of Education adopted an "Anti-Harassment and Bullying Policy" in which the Board states, among other things, that it "believes that Ohio schools should be physically safe and emotionally secure environments for all students and staff." In that policy, the State Board directed the Department of Education to provide schools with model policies and strategies that promote safe and secure learning environments, to disseminate information and provide professional development in regard to the models, and to design a plan and process to evaluate the effects of the State Board's policy.

HISTORY

ACTION	DATE
Introduced	05-24-05
Reported, H. Education	01-11-06
Passed House (93-4)	01-24-06
Reported, S. Education	12-13-06
Passed Senate (27-5)	12-13-06
House concurred in Senate amendments (90-5)	12-19-06

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