

**As Introduced**

**129th General Assembly  
Regular Session  
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**S. B. No. 221**

**Senator Sawyer**

**Cosponsor: Senator Skindell**

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**A B I L L**

To amend section 3301.0711 of the Revised Code to 1  
make the elementary-level achievement assessments 2  
public records. 3

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

**Section 1.** That section 3301.0711 of the Revised Code be 4  
amended to read as follows: 5

**Sec. 3301.0711.** (A) The department of education shall: 6

(1) Annually furnish to, grade, and score all assessments 7  
required by divisions (A)(1) and (B)(1) of section 3301.0710 of 8  
the Revised Code to be administered by city, local, exempted 9  
village, and joint vocational school districts, except that each 10  
district shall score any assessment administered pursuant to 11  
division (B)(10) of this section. Each assessment so furnished 12  
shall include the data verification code of the student to whom 13  
the assessment will be administered, as assigned pursuant to 14  
division (D)(2) of section 3301.0714 of the Revised Code. In 15  
furnishing the practice versions of Ohio graduation tests 16  
prescribed by division (D) of section 3301.0710 of the Revised 17  
Code, the department shall make the tests available on its web 18  
site for reproduction by districts. In awarding contracts for 19

grading assessments, the department shall give preference to 20  
Ohio-based entities employing Ohio residents. 21

(2) Adopt rules for the ethical use of assessments and 22  
prescribing the manner in which the assessments prescribed by 23  
section 3301.0710 of the Revised Code shall be administered to 24  
students. 25

(B) Except as provided in divisions (C) and (J) of this 26  
section, the board of education of each city, local, and exempted 27  
village school district shall, in accordance with rules adopted 28  
under division (A) of this section: 29

(1) Administer the English language arts assessments 30  
prescribed under division (A)(1)(a) of section 3301.0710 of the 31  
Revised Code twice annually to all students in the third grade who 32  
have not attained the score designated for that assessment under 33  
division (A)(2)(b) of section 3301.0710 of the Revised Code. 34

(2) Administer the mathematics assessment prescribed under 35  
division (A)(1)(a) of section 3301.0710 of the Revised Code at 36  
least once annually to all students in the third grade. 37

(3) Administer the assessments prescribed under division 38  
(A)(1)(b) of section 3301.0710 of the Revised Code at least once 39  
annually to all students in the fourth grade. 40

(4) Administer the assessments prescribed under division 41  
(A)(1)(c) of section 3301.0710 of the Revised Code at least once 42  
annually to all students in the fifth grade. 43

(5) Administer the assessments prescribed under division 44  
(A)(1)(d) of section 3301.0710 of the Revised Code at least once 45  
annually to all students in the sixth grade. 46

(6) Administer the assessments prescribed under division 47  
(A)(1)(e) of section 3301.0710 of the Revised Code at least once 48  
annually to all students in the seventh grade. 49

(7) Administer the assessments prescribed under division 50  
(A)(1)(f) of section 3301.0710 of the Revised Code at least once 51  
annually to all students in the eighth grade. 52

(8) Except as provided in division (B)(9) of this section, 53  
administer any assessment prescribed under division (B)(1) of 54  
section 3301.0710 of the Revised Code as follows: 55

(a) At least once annually to all tenth grade students and at 56  
least twice annually to all students in eleventh or twelfth grade 57  
who have not yet attained the score on that assessment designated 58  
under that division; 59

(b) To any person who has successfully completed the 60  
curriculum in any high school or the individualized education 61  
program developed for the person by any high school pursuant to 62  
section 3323.08 of the Revised Code but has not received a high 63  
school diploma and who requests to take such assessment, at any 64  
time such assessment is administered in the district. 65

(9) In lieu of the board of education of any city, local, or 66  
exempted village school district in which the student is also 67  
enrolled, the board of a joint vocational school district shall 68  
administer any assessment prescribed under division (B)(1) of 69  
section 3301.0710 of the Revised Code at least twice annually to 70  
any student enrolled in the joint vocational school district who 71  
has not yet attained the score on that assessment designated under 72  
that division. A board of a joint vocational school district may 73  
also administer such an assessment to any student described in 74  
division (B)(8)(b) of this section. 75

(10) If the district has been declared to be under an 76  
academic watch or in a state of academic emergency pursuant to 77  
section 3302.03 of the Revised Code or has a three-year average 78  
graduation rate of not more than seventy-five per cent, administer 79  
each assessment prescribed by division (D) of section 3301.0710 of 80

the Revised Code in September to all ninth grade students, 81  
beginning in the school year that starts July 1, 2005. 82

Except as provided in section 3313.614 of the Revised Code 83  
for administration of an assessment to a person who has fulfilled 84  
the curriculum requirement for a high school diploma but has not 85  
passed one or more of the required assessments, the assessments 86  
prescribed under division (B)(1) of section 3301.0710 of the 87  
Revised Code and the practice assessments prescribed under 88  
division (D) of that section and required to be administered under 89  
divisions (B)(8), (9), and (10) of this section shall not be 90  
administered after the assessment system prescribed by division 91  
(B)(2) of section 3301.0710 and section 3301.0712 of the Revised 92  
Code is implemented under rule of the state board adopted under 93  
division (D)(1) of section 3301.0712 of the Revised Code. 94

(11) Administer the assessments prescribed by division (B)(2) 95  
of section 3301.0710 and section 3301.0712 of the Revised Code in 96  
accordance with the timeline and plan for implementation of those 97  
assessments prescribed by rule of the state board adopted under 98  
division (D)(1) of section 3301.0712 of the Revised Code. 99

(C)(1)(a) In the case of a student receiving special 100  
education services under Chapter 3323. of the Revised Code, the 101  
individualized education program developed for the student under 102  
that chapter shall specify the manner in which the student will 103  
participate in the assessments administered under this section. 104  
The individualized education program may excuse the student from 105  
taking any particular assessment required to be administered under 106  
this section if it instead specifies an alternate assessment 107  
method approved by the department of education as conforming to 108  
requirements of federal law for receipt of federal funds for 109  
disadvantaged pupils. To the extent possible, the individualized 110  
education program shall not excuse the student from taking an 111  
assessment unless no reasonable accommodation can be made to 112

enable the student to take the assessment. 113

(b) Any alternate assessment approved by the department for a 114  
student under this division shall produce measurable results 115  
comparable to those produced by the assessment it replaces in 116  
order to allow for the student's results to be included in the 117  
data compiled for a school district or building under section 118  
3302.03 of the Revised Code. 119

(c) Any student enrolled in a chartered nonpublic school who 120  
has been identified, based on an evaluation conducted in 121  
accordance with section 3323.03 of the Revised Code or section 504 122  
of the "Rehabilitation Act of 1973," 87 Stat. 355, 29 U.S.C.A. 123  
794, as amended, as a child with a disability shall be excused 124  
from taking any particular assessment required to be administered 125  
under this section if a plan developed for the student pursuant to 126  
rules adopted by the state board excuses the student from taking 127  
that assessment. In the case of any student so excused from taking 128  
an assessment, the chartered nonpublic school shall not prohibit 129  
the student from taking the assessment. 130

(2) A district board may, for medical reasons or other good 131  
cause, excuse a student from taking an assessment administered 132  
under this section on the date scheduled, but that assessment 133  
shall be administered to the excused student not later than nine 134  
days following the scheduled date. The district board shall 135  
annually report the number of students who have not taken one or 136  
more of the assessments required by this section to the state 137  
board of education not later than the thirtieth day of June. 138

(3) As used in this division, "limited English proficient 139  
student" has the same meaning as in 20 U.S.C. 7801. 140

No school district board shall excuse any limited English 141  
proficient student from taking any particular assessment required 142  
to be administered under this section, except that any limited 143

English proficient student who has been enrolled in United States 144  
schools for less than one full school year shall not be required 145  
to take any reading, writing, or English language arts assessment. 146  
However, no board shall prohibit a limited English proficient 147  
student who is not required to take an assessment under this 148  
division from taking the assessment. A board may permit any 149  
limited English proficient student to take an assessment required 150  
to be administered under this section with appropriate 151  
accommodations, as determined by the department. For each limited 152  
English proficient student, each school district shall annually 153  
assess that student's progress in learning English, in accordance 154  
with procedures approved by the department. 155

The governing authority of a chartered nonpublic school may 156  
excuse a limited English proficient student from taking any 157  
assessment administered under this section. However, no governing 158  
authority shall prohibit a limited English proficient student from 159  
taking the assessment. 160

(D)(1) In the school year next succeeding the school year in 161  
which the assessments prescribed by division (A)(1) or (B)(1) of 162  
section 3301.0710 of the Revised Code or former division (A)(1), 163  
(A)(2), or (B) of section 3301.0710 of the Revised Code as it 164  
existed prior to September 11, 2001, are administered to any 165  
student, the board of education of any school district in which 166  
the student is enrolled in that year shall provide to the student 167  
intervention services commensurate with the student's performance, 168  
including any intensive intervention required under section 169  
3313.608 of the Revised Code, in any skill in which the student 170  
failed to demonstrate at least a score at the proficient level on 171  
the assessment. 172

(2) Following any administration of the assessments 173  
prescribed by division (D) of section 3301.0710 of the Revised 174  
Code to ninth grade students, each school district that has a 175

three-year average graduation rate of not more than seventy-five 176  
per cent shall determine for each high school in the district 177  
whether the school shall be required to provide intervention 178  
services to any students who took the assessments. In determining 179  
which high schools shall provide intervention services based on 180  
the resources available, the district shall consider each school's 181  
graduation rate and scores on the practice assessments. The 182  
district also shall consider the scores received by ninth grade 183  
students on the English language arts and mathematics assessments 184  
prescribed under division (A)(1)(f) of section 3301.0710 of the 185  
Revised Code in the eighth grade in determining which high schools 186  
shall provide intervention services. 187

Each high school selected to provide intervention services 188  
under this division shall provide intervention services to any 189  
student whose results indicate that the student is failing to make 190  
satisfactory progress toward being able to attain scores at the 191  
proficient level on the Ohio graduation tests. Intervention 192  
services shall be provided in any skill in which a student 193  
demonstrates unsatisfactory progress and shall be commensurate 194  
with the student's performance. Schools shall provide the 195  
intervention services prior to the end of the school year, during 196  
the summer following the ninth grade, in the next succeeding 197  
school year, or at any combination of those times. 198

(E) Except as provided in section 3313.608 of the Revised 199  
Code and division (M) of this section, no school district board of 200  
education shall utilize any student's failure to attain a 201  
specified score on an assessment administered under this section 202  
as a factor in any decision to deny the student promotion to a 203  
higher grade level. However, a district board may choose not to 204  
promote to the next grade level any student who does not take an 205  
assessment administered under this section or make up an 206  
assessment as provided by division (C)(2) of this section and who 207

is not exempt from the requirement to take the assessment under 208  
division (C)(3) of this section. 209

(F) No person shall be charged a fee for taking any 210  
assessment administered under this section. 211

(G)(1) Each school district board shall designate one 212  
location for the collection of assessments administered in the 213  
spring under division (B)(1) of this section and those 214  
administered under divisions (B)(2) to (7) of this section. Each 215  
district board shall submit the assessments to the entity with 216  
which the department contracts for the scoring of the assessments 217  
as follows: 218

(a) If the district's total enrollment in grades kindergarten 219  
through twelve during the first full school week of October was 220  
less than two thousand five hundred, not later than the Friday 221  
after all of the assessments have been administered; 222

(b) If the district's total enrollment in grades kindergarten 223  
through twelve during the first full school week of October was 224  
two thousand five hundred or more, but less than seven thousand, 225  
not later than the Monday after all of the assessments have been 226  
administered; 227

(c) If the district's total enrollment in grades kindergarten 228  
through twelve during the first full school week of October was 229  
seven thousand or more, not later than the Tuesday after all of 230  
the assessments have been administered. 231

However, any assessment that a student takes during the 232  
make-up period described in division (C)(2) of this section shall 233  
be submitted not later than the Friday following the day the 234  
student takes the assessment. 235

(2) The department or an entity with which the department 236  
contracts for the scoring of the assessment shall send to each 237  
school district board a list of the individual scores of all 238



persons taking an assessment prescribed by division (A)(1) or 239  
(B)(1) of section 3301.0710 of the Revised Code within sixty days 240  
after its administration, but in no case shall the scores be 241  
returned later than the fifteenth day of June following the 242  
administration. For assessments administered under this section by 243  
a joint vocational school district, the department or entity shall 244  
also send to each city, local, or exempted village school district 245  
a list of the individual scores of any students of such city, 246  
local, or exempted village school district who are attending 247  
school in the joint vocational school district. 248

(H) Individual scores on any assessments administered under 249  
this section shall be released by a district board only in 250  
accordance with section 3319.321 of the Revised Code and the rules 251  
adopted under division (A) of this section. No district board or 252  
its employees shall utilize individual or aggregate results in any 253  
manner that conflicts with rules for the ethical use of 254  
assessments adopted pursuant to division (A) of this section. 255

(I) Except as provided in division (G) of this section, the 256  
department or an entity with which the department contracts for 257  
the scoring of the assessment shall not release any individual 258  
scores on any assessment administered under this section. The 259  
state board of education shall adopt rules to ensure the 260  
protection of student confidentiality at all times. The rules may 261  
require the use of the data verification codes assigned to 262  
students pursuant to division (D)(2) of section 3301.0714 of the 263  
Revised Code to protect the confidentiality of student scores. 264

(J) Notwithstanding division (D) of section 3311.52 of the 265  
Revised Code, this section does not apply to the board of 266  
education of any cooperative education school district except as 267  
provided under rules adopted pursuant to this division. 268

(1) In accordance with rules that the state board of 269  
education shall adopt, the board of education of any city, 270

exempted village, or local school district with territory in a 271  
cooperative education school district established pursuant to 272  
divisions (A) to (C) of section 3311.52 of the Revised Code may 273  
enter into an agreement with the board of education of the 274  
cooperative education school district for administering any 275  
assessment prescribed under this section to students of the city, 276  
exempted village, or local school district who are attending 277  
school in the cooperative education school district. 278

(2) In accordance with rules that the state board of 279  
education shall adopt, the board of education of any city, 280  
exempted village, or local school district with territory in a 281  
cooperative education school district established pursuant to 282  
section 3311.521 of the Revised Code shall enter into an agreement 283  
with the cooperative district that provides for the administration 284  
of any assessment prescribed under this section to both of the 285  
following: 286

(a) Students who are attending school in the cooperative 287  
district and who, if the cooperative district were not 288  
established, would be entitled to attend school in the city, 289  
local, or exempted village school district pursuant to section 290  
3313.64 or 3313.65 of the Revised Code; 291

(b) Persons described in division (B)(8)(b) of this section. 292

Any assessment of students pursuant to such an agreement 293  
shall be in lieu of any assessment of such students or persons 294  
pursuant to this section. 295

(K)(1) As a condition of compliance with section 3313.612 of 296  
the Revised Code, each chartered nonpublic school that educates 297  
students in grades nine through twelve shall administer the 298  
assessments prescribed by divisions (B)(1) and (2) of section 299  
3301.0710 of the Revised Code. Any chartered nonpublic school may 300  
participate in the assessment program by administering any of the 301

assessments prescribed by division (A) of section 3301.0710 of the Revised Code. The chief administrator of the school shall specify which assessments the school will administer. Such specification shall be made in writing to the superintendent of public instruction prior to the first day of August of any school year in which assessments are administered and shall include a pledge that the nonpublic school will administer the specified assessments in the same manner as public schools are required to do under this section and rules adopted by the department.

(2) The department of education shall furnish the assessments prescribed by section 3301.0710 or 3301.0712 of the Revised Code to each chartered nonpublic school that participates under this division.

(L)(1) The superintendent of the state school for the blind and the superintendent of the state school for the deaf shall administer the assessments described by sections 3301.0710 and 3301.0712 of the Revised Code. Each superintendent shall administer the assessments in the same manner as district boards are required to do under this section and rules adopted by the department of education and in conformity with division (C)(1)(a) of this section.

(2) The department of education shall furnish the assessments described by sections 3301.0710 and 3301.0712 of the Revised Code to each superintendent.

(M) Notwithstanding division (E) of this section, a school district may use a student's failure to attain a score in at least the proficient range on the mathematics assessment described by division (A)(1)(a) of section 3301.0710 of the Revised Code or on an assessment described by division (A)(1)(b), (c), (d), (e), or (f) of section 3301.0710 of the Revised Code as a factor in retaining that student in the current grade level.

(N)(1) In the manner specified in divisions (N)(3) and (4) of 333  
this section, the assessments required by division (A)(1) of 334  
section 3301.0710 of the Revised Code shall become public records 335  
pursuant to section 149.43 of the Revised Code on the first day of 336  
July following the school year that the assessments were 337  
administered. 338

(2) The department may field test proposed questions with 339  
samples of students to determine the validity, reliability, or 340  
appropriateness of questions for possible inclusion in a future 341  
year's assessment. The department also may use anchor questions on 342  
assessments to ensure that different versions of the same 343  
assessment are of comparable difficulty. 344

Field test questions and anchor questions shall not be 345  
considered in computing scores for individual students. Field test 346  
questions and anchor questions may be included as part of the 347  
administration of any assessment required by division (A)(1) or 348  
(B)(1) of section 3301.0710 of the Revised Code. 349

(3) Any field test question or anchor question administered 350  
under division (N)(2) of this section shall not be a public 351  
record. Such field test questions and anchor questions shall be 352  
redacted from any assessments which are released as a public 353  
record pursuant to division (N)(1) of this section. 354

(4) This division applies to the assessments prescribed by 355  
division (A) of section 3301.0710 of the Revised Code. 356

(a) The first administration of each assessment, as specified 357  
in former section 3301.0712 of the Revised Code, shall be a public 358  
record. 359

(b) For subsequent administrations of each assessment ~~prior~~ 360  
~~to the 2011-2012 school year~~, not less than forty per cent of the 361  
questions on the assessment that are used to compute a student's 362  
score shall be a public record. The department shall determine 363

which questions will be needed for reuse on a future assessment 364  
and those questions shall not be public records and shall be 365  
redacted from the assessment prior to its release as a public 366  
record. However, for each redacted question, the department shall 367  
inform each city, local, and exempted village school district of 368  
the statewide academic standard adopted by the state board of 369  
education under section 3301.079 of the Revised Code and the 370  
corresponding benchmark to which the question relates. The 371  
preceding sentence does not apply to field test questions that are 372  
redacted under division (N)(3) of this section. 373

~~(c) The administrations of each assessment in the 2011-2012 374  
school year and later shall not be a public record. 375~~

(5) Each assessment prescribed by division (B)(1) of section 376  
3301.0710 of the Revised Code shall not be a public record. 377

(0) As used in this section: 378

(1) "Three-year average" means the average of the most recent 379  
consecutive three school years of data. 380

(2) "Dropout" means a student who withdraws from school 381  
before completing course requirements for graduation and who is 382  
not enrolled in an education program approved by the state board 383  
of education or an education program outside the state. "Dropout" 384  
does not include a student who has departed the country. 385

(3) "Graduation rate" means the ratio of students receiving a 386  
diploma to the number of students who entered ninth grade four 387  
years earlier. Students who transfer into the district are added 388  
to the calculation. Students who transfer out of the district for 389  
reasons other than dropout are subtracted from the calculation. If 390  
a student who was a dropout in any previous year returns to the 391  
same school district, that student shall be entered into the 392  
calculation as if the student had entered ninth grade four years 393  
before the graduation year of the graduating class that the 394

student joins. 395

**Section 2.** That existing section 3301.0711 of the Revised 396

Code is hereby repealed. 397