



Ohio Legislative Service Commission

Bill Analysis

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H.B. 373

128th General Assembly
(As Introduced)

Reps. Carney and Wachtmann, Chandler, Fende, Gardner, Harris, Hite, Hottinger

BILL SUMMARY

- Requires each school district, community school, and STEM school to utilize the State Board of Education's academic standards in physical education.
- Requires the State Board to establish requirements for physical education licensure and requires teachers employed to teach physical education to be licensed and certified in physical education.
- Requires schools to adopt a requirement that students participate in at least 30 minutes of moderate to rigorous physical activity per day.
- Requires students in the Class of 2014 and later to complete an additional one-half unit of physical education (for a total of one unit) to graduate from a public or chartered nonpublic high school.
- Eliminates authority for a school district, STEM school, or chartered nonpublic school to excuse from physical education students in the Class of 2014 or later who have participated in interscholastic athletics, marching band, or cheerleading for at least two full seasons.
- Requires school districts, community schools, and STEM schools to establish a body mass index and weight status category screening program.
- Requires school districts, community schools, and STEM schools to submit aggregate body mass screening data to the Education Management Information System (EMIS).
- Requires district and state report cards to include data on body mass index and weight status categories of students.

- Revises nutritional requirements for food sold at schools and extends them to beverages.
- Exempts schools under contract for the provision of food and beverages from the bill's food and beverage nutrition requirements until renewal of the contract.
- Requires the Department of Education to make nutrition software available to public and chartered nonpublic schools if it becomes available to the Department and requires them to use the system if it becomes available.
- Permits breakfast provided as part of a school breakfast program to be offered in the classroom.
- Provides that, if the General Assembly appropriates funds for this purpose, students eligible for breakfast at a reduced price will receive it free of charge.
- Requires that the Department of Education establish a clearinghouse for best practices regarding student nutrition, physical activity, and body mass index screenings.
- Establishes the Healthy Choices for Healthy Children Council.

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CONTENT AND OPERATION

Academic standards in physical education

(R.C. 3301.079, 3314.03, and 3326.11)

Current law directs the State Board of Education to adopt statewide academic standards at least every five years for each of grades kindergarten through twelve (K-12) in a variety of subject areas, including physical education. For physical education, the State Board must either adopt the most recent standards developed by the National Association for Sport and Physical Education for physical education in grades K-12 or adopt and periodically revise its own standards. The bill requires that each community school¹ and Science, Technology, Engineering, and Mathematics (STEM)² school in addition to each school district, utilize the physical education standards adopted by the State Board.

Physical education teacher license

(R.C. 3314.03, 3319.076, 3319.227, and 3326.13)

Current law does not require a physical education teacher to hold certification in physical education, nor does it require the State Board to establish such certification. The bill prohibits a school district, STEM school, or community school from employing any classroom teacher on or after July 1, 2013, to provide instruction in physical education in grades K-12 unless the teacher holds a valid license and certification for teaching physical education. The State Board must develop certification requirements for physical education teachers no later than December 31, 2010.

Physical activity requirements

(R.C. 3313.6016, 3314.03, and 3326.11)

The bill provides that, not later than July 1, 2010, the board of education of each city, exempted village, or local school district,³ each community school, and each STEM school is to adopt a policy that, beginning in the 2010-2011 school year, requires students K-12 to engage in at least 30 minutes of moderate to rigorous physical activity each school day, excluding recess. Physical activity engaged in during a physical

¹ A community school is a public school that is independent of any school district (R.C. 3314.01).

² H.B. 119 of the 127th General Assembly established independent Science, Technology, Engineering, and Mathematics (STEM) schools teaching any of grades six through twelve.

³ Most public school districts are designated as city, exempted village, or local school districts.

education course counts toward the daily requirement. The board or governing authority of a school may excuse a student from the daily activity requirement for any period in which the student is participating in interscholastic athletics, marching band, or cheerleading.

Physical education requirement for diploma

(R.C. 3313.603)

Under the bill, students who are subject to the Ohio Core curriculum (the classes of 2014 and later) must complete one unit of physical education to graduate from a school district, community school, STEM school, or chartered nonpublic school. Since the Ohio Core curriculum already includes one-half unit of physical education, students must complete an additional one-half unit to satisfy the bill's requirement. This change increases the total number of credits required by the Ohio Core curriculum from 20 units to 20½ units.

Generally, under current law, one unit of course instruction is a minimum of 120 hours of instruction and one-half unit is at least 60 instructional hours. However, continuing law defines one-half unit of physical education as at least 120 instructional hours. The bill doubles that number for one full unit of physical education. Consequently, under the bill, one unit of physical education is a minimum of 240 instructional hours, instead of the 120 instructional hours for most other courses.

The physical education requirement does not apply to students enrolled in dropout prevention and recovery programs who complete a competency-based instructional program instead of the Ohio Core curriculum.⁴ But it does apply to students in the four graduating classes of 2014 through 2017, who may opt out of Ohio Core with their parent's consent under certain conditions. Students who opt out must still complete the current minimum high school curriculum, which also includes one-half unit of physical education.⁵

Background--Ohio Core curriculum

Under current law, students entering ninth grade in the 2010-2011 school year or later generally must complete the Ohio Core curriculum as one condition of earning a high school diploma from a public or chartered nonpublic high school.⁶ (However,

⁴ See R.C. 3313.603(F).

⁵ See R.C. 3313.603(B) and (D).

⁶ Students also currently must pass the Ohio Graduation Tests (OGT) or meet alternative testing requirements for high school graduation. The OGT will eventually be replaced by a multi-factored

disabled students must complete their individualized education plans (IEPs) instead.) The Ohio Core consists of 20 units of study, as shown in the table.

SUBJECT	OHIO CORE CURRICULUM
English Lang. Arts	4 units (480 hours)
Math	4 units (480 hours), including 1 unit (120 hours) of algebra II or its equivalent
Science	3 units with inquiry-based laboratory experience,* including the following, or their equivalent: 1 unit physical sciences; 1 unit life sciences; 1 unit of advanced study in (a) chemistry, physics, or other physical science, (b) advanced biology or other life science, or (c) astronomy, physical geology, or other earth or space science.
Social Studies	3 units (360 hours), including ½ unit (60 hours) of American history and ½ unit of American government
Health	½ unit (60 hours)
Physical Education	½ unit (120 hours)
Electives	5 units (600 hours), which must consist of one or a combination of foreign language, fine arts, business, career-technical education, family and consumer sciences, technology, agricultural education, or English language arts, math, science, or social studies courses not otherwise required under the Ohio Core
Total	20 units

* It is not clear whether science units with "laboratory experience" must consist of 150 hours of instruction (which is required for all "laboratory courses") instead of the usual 120 hours of classroom instruction.

Elimination of physical education substitutions

(R.C. 3313.603(L))

Beginning with the first class of students subject to the Ohio Core curriculum, the bill eliminates authority for a school district, STEM school, or chartered nonpublic school to adopt a policy under which it may excuse from high school physical education students who have participated in interscholastic athletics, marching band, or cheerleading for at least two full seasons.⁷ Currently, if the district or school adopts

assessment system required to be developed by the State Board of Education, the Superintendent of Public Instruction, and the Chancellor of the Board of Regents. (See R.C. 3301.0712, 3313.61, 3313.612, and 3313.615, none in the bill.)

⁷ STEM Schools have this authority under R.C. 3326.15 (not in the bill).



such a policy, it may not require the student to complete any physical education course as a condition to graduate from high school. However, the student must complete one-half unit of at least 60 hours of instruction in another course of study.

Body mass screening

(R.C. 3313.674, 3314.03, and 3326.11)

Under the bill, each city, exempted village, or local school district, each community school, and each STEM school is to require each student enrolled in kindergarten, third grade, fifth grade, and ninth grade to undergo a screening for body mass index and weight status category before November 1 of that school year. The screening may be provided by the district or school, the district or school may contract with another entity for provision of the screenings, or the district or school may request the parent or guardian of each student to obtain the required screening and submit the results to the district or school. If the school provides the screenings itself or contracts with another entity for the screenings, the district or school is required to protect student privacy by ensuring that each student is screened alone and not in the presence of other students or staff.

Before August 1, the district or school is required to provide the parent or guardian of each student subject to the bill's screening requirements information about the district or school's screening program. If the district or school requests parents and guardians to obtain a screening from a provider of their choosing, the district or school is to provide the parents and guardians with a list of providers and information about screening services available in the community to those who cannot afford a private provider.

A parent or guardian of a student subject to the screening requirements may sign and submit to the district or school a written statement indicating that the parent or guardian does not wish to have the student undergo the screening. The district or school is prohibited from requiring such students to be screened.

The bill requires the district or school to notify the parent or guardian of each student screened under the program of any health risks associated with the student's screening results and provide to the parent or guardian information about appropriately addressing the risks. For this purpose, the Department of Education, in consultation with the Department of Health and the Healthy Choices for Healthy Children Council established by the bill (see "**Healthy Choices for Healthy Children Council**," below), is to develop a list of documents, pamphlets, or other resources that districts or schools may distribute to parents and guardians.

The district or school is required to maintain the confidentiality of each student's individual screening results. No district or school is to report a student's individual screening results to any person other than the student's parent or guardian. However, the district or school is required to report aggregated body mass index and weight status category data collected under the program to the Department of Education through the Education Management Information System (EMIS). The Department is authorized to share data reported under the screening program with the Department of Health and other governmental entities for the purpose of monitoring population health, making reports, or public health promotional activities.

EMIS data

(R.C. 3301.0714, 3314.03, and 3326.11)

The Education Management Information System (EMIS) is a statewide electronic database with information on students, school staff, districts, and buildings. The Department of Education uses EMIS data to calculate payments to and monitor the performance of districts and schools. All school districts, community schools, and STEM schools are required to report data electronically to EMIS. The Department of Education is authorized to sanction any school district or community school that reports incomplete or inaccurate data, reports data that does not conform to data requirements, fails to report data in a timely manner, or otherwise does not make a good faith effort to report required data.⁸

The bill requires the aggregate results of student screenings required by the bill for body mass index and weight status category to be submitted to EMIS by school districts, community schools, and STEM schools.

School district report cards

(R.C. 3302.02 and 3302.03)

Current law requires the Department of Education to issue an annual report card for each school district, each school building, and the state as a whole based on certain performance indicators. Districts and schools receive ratings based on this data.

The bill requires the Department to include on each of these report cards the percentage of students enrolled in the district or building in kindergarten, third grade, fifth grade, and ninth grade in each of the following weight status categories:

⁸ While STEM schools are required to comply with the EMIS requirements, the EMIS requirements do not specifically permit the Department to sanction a STEM school that does not comply with the requirements.

- (1) Underweight;
- (2) Healthy weight;
- (3) Overweight;
- (4) Obese.

The State Board of Education, no later than December 31, 2010, is to establish for use in the report card a performance indicator that is (1) based on student success in meeting the benchmarks of the physical education standards established by the bill and (2) complies with the requirements for local wellness policies prescribed by the federal Child Nutrition Act.⁹ Following establishment of the indicator, the Department of Education is required to issue guidance to school districts and buildings explaining how the indicator will be used for evaluation and how the indicator will factor into the performance ratings, beginning with the ratings issued for the 2011-2012 school year.

School nutrition requirements

(R.C. 3313.814, 3313.816, 3313.817, 3314.03, and 3326.11; Section 4)

Under current law, each school district board of education must adopt and enforce standards that (1) govern the types of food that may be sold on the premises of the district's schools, and (2) specify the time and place each type of food may be sold. In adopting these standards, a board is required to consider each food's nutritional value. A board is prohibited from selling food on any school premises unless the sales are in accordance with the board's standards. The State Board is required to formulate and adopt guidelines, which boards of education are permitted, but not required, to follow with respect to food sales on school premises.

Beginning the July following its effective date, the bill revises provisions concerning requirements for food sold at schools, applies them to beverages, and extends the provisions to community schools, chartered nonpublic schools,¹⁰ and STEM schools. Under the bill, each school district board of education, chartered nonpublic school governing authority, community school, and STEM school is to adopt and

⁹ According to the requirements of the local wellness policy, school districts must set goals for nutrition education, physical activity, campus food provision, and other school-based activities designed to promote student wellness. Additionally, districts are required to involve a broad group of individuals in policy development and to have a plan for measuring policy implementation (<http://www.fns.usda.gov/tn/Healthy/Wellnesspolicy.html>).

¹⁰ A chartered nonpublic school is a nonpublic school that meets standards established for such schools by the State Board (R.C. 5104.01).

enforce, specifically, nutrition standards governing types of food and beverages that may be sold on the premises of its schools, and specifying the time and place each type of food or beverage may be sold. The bill requires that the board or governing authority, when considering the nutritional value of food and beverages, to consult the dietary guidelines for Americans jointly developed by the United States Departments of Agriculture and Health and Human Services and, to the maximum extent possible, incorporate those guidelines into the standards.

Nutritional requirements for beverages

When adopting standards, a board or school governing authority is required to comply with the following requirements regarding the sale of "a la carte"¹¹ beverages:

Grades	Time period	Beverages allowed			
Schools composed of a majority of grades K-4	Before January 1, 2014	Water	Eight ounces or less of low-fat or fat-free milk, including flavored milk, that contains no more than 170 calories per eight ounces	Eight ounces or less of 100% fruit juice, or a 100% fruit juice and water blend with no added sweeteners, that contains no more than 160 calories per eight ounces	No other beverage
	After January 1, 2014	Water	Same as above except	Same as above	No other beverage

¹¹ "A la carte item" is defined by the bill as an individually priced food or beverage item that is available for sale to students through any of the following:

- (a) A school food service program;
- (b) A vending machine located on school property;
- (c) A store operated by the school, a student association, or other school-sponsored organization.

The bill provides that "a la carte item" does not include any food or beverage item available for sale in connection with a school-sponsored fundraiser held outside of the regular school day, any other school-sponsored event held outside of the regular school day, or an interscholastic athletic event. "A la carte item" also does not include any food or beverage item that is part of a reimbursable meal and is available for sale as an individually priced item in a serving portion of the same size as in the reimbursable meal.

"Reimbursable meal" is defined as a meal that is provided to student through a school breakfast or lunch program established under federal law and meets the criteria for reimbursement established by the U.S. Department of Agriculture.

Grades	Time period	Beverages allowed			
			that the milk may contain no more than 150 calories per eight ounces		
Schools composed of a majority of grades 5-8	Before January 1, 2014	Water	Eight ounces or less of low-fat or fat-free milk, including flavored milk, that contains no more than 170 calories per eight ounces	Ten ounces or less of 100% fruit juice, or a 100% fruit juice and water blend with no added sweeteners, that contains no more than 160 calories per eight ounces	No other beverage
	After January 1, 2014	Water	Same as above except the milk may contain no more than 150 calories per eight ounces	Same as above	No other beverage
Schools composed of a majority of grades 9-12	Before January 1, 2014	Water	Sixteen ounces or less of low-fat or fat-free milk, including flavored milk, that contains no more than 170 calories per eight ounces	Twelve ounces or less of 100% fruit juice, or a 100% fruit juice and water blend with no added sweeteners, that contains no more than 160 calories per eight ounces	Twelve ounces or less of any beverage that contains no more than 66 calories per eight ounces, or any size of a beverage that contains no more than ten calories per eight ounces, which may include caffeinated beverages and beverages

Grades	Time period	Beverages allowed			
					with added sweeteners, carbonation, or artificial flavoring
	After January 1, 2014	Water	Same as above except the milk may contain no more than 150 calories per eight ounces	Same as above	Same as above

Each school is to require no less than 50% of the a la carte beverages available for sale from any of the following sources to be water or other beverages that contain no more than ten calories per eight ounces: the school food service program, a vending machine,¹² or a school store.

Nutrition software

The bill requires the Department of Education to make available, free of charge, to each public and chartered nonpublic school, any computer software for assessing the nutritional value of foods if the software is available to the Department free of charge and does all of the following:

- (1) Rates the healthiness of foods based on nutrient density;
- (2) Assesses the amount of calories, total fat, saturated fat, trans fat, sugar, protein, fiber, calcium, iron, vitamin A, and vitamin C in each food item;
- (3) Evaluates the nutritional value of foods based on the dietary guidelines for Americans jointly developed by the U.S. Departments of Agriculture and Health and Human Services as they pertain to children and adolescents.

If software is provided, a school is required to use it to determine the nutritional value of each a la carte food item available for sale at the school. In addition, the school must do all of the following:

¹² The requirement does not apply to a vending machine that sells only milk or reimbursable meals.

(1) Not sell a la carte food that is in the lowest rated category of foods designated by the software;

(2) In the first school year in which it is required to use the software, see that at least 20% of the a la carte food items available during the regular and extended school day are in the highest rated category of foods designated by the software and in each school year thereafter, at least 40% of the a la carte food items available for sale be in that category;

(3) Require that, for each a la carte food item not in the highest rated category of foods designated by the software, the food item contain at least two of the following:

- (i) No less than five grams of protein.
- (ii) No less than 10% of the recommended daily value of fiber.
- (iii) No less than 10% of the recommended daily value of calcium.
- (iv) No less than 10% of the recommended daily value of iron.
- (v) No less than 10% of the recommended daily value of vitamin A.
- (vi) No less than 10% of the recommended daily value of vitamin C.

Existing food or beverage contracts

The bill provides that its food and beverage nutritional requirements do not apply to any school district or public or chartered nonpublic school that, prior to the bill's effective date, entered into a contract with a producer or distributor of a food or beverage that requires the sale of the food or beverage to students in violation of the bill's provisions. The provisions apply at the expiration of the contract and to any renewal.

Any contract entered into between the bill's effective date and the first day of July following that date (the date the nutritional requirements begin) is required to comply with the bill's provisions, even though those provisions are not yet in effect.

Additional requirements

The bill provides that, if after July 1, 2009, the U.S. Department of Agriculture adopts regulations for the sale of a la carte beverages or food in schools that are more restrictive than the beverage or food requirements established by the bill, the Department's regulations are to supersede the bill's requirements. Each chartered

nonpublic school is required to comply with the regulations, regardless of whether the Department of Agriculture applies the regulations to nonpublic schools.

The bill provides that the Department of Education is to determine whether each public and chartered nonpublic school is in compliance with regulations adopted by the U.S. Department of Agriculture that are more restrictive than those established by the bill. The Department of Education is authorized to make that determination in conjunction with any regular review of the school food service program operated by the school, provided that the review is conducted at least once every five years.¹³

School lunches and breakfasts

Federal school food programs

(R.C. 3313.813, 3314.18, and 3326.11)

Current law provides that school districts, chartered nonpublic schools, and community schools may, and in some instances must, participate in the federal school breakfast and lunch programs.

The bill provides that any school district board of education, chartered nonpublic school, or community school that participates in a breakfast program may offer breakfast to pupils in their classrooms during the school day. It also provides that, notwithstanding any other requirement of state law regarding the federal school food program, in each fiscal year in which the General Assembly appropriates funds for this purpose, each school district, chartered nonpublic school, and community school that participates in the breakfast program must provide free breakfasts to students eligible for breakfast at a reduced price.

Best practices clearinghouse and Healthy Choices for Healthy Children Council

Clearinghouse

(R.C. 3301.91)

The bill requires the Department of Education to establish a clearinghouse of best practices in student nutrition, physical activity for students, and body mass index screenings that schools may use to promote student health. In developing the clearinghouse, the Department is required to consider the recommendations of the Healthy Choices for Healthy Children Council.

¹³ The bill is silent on whether the Department may make a determination of compliance by community schools.

Healthy Choices for Healthy Children Council

(R.C. 3301.92 and 3301.921; Section 5)

The bill establishes the Healthy Choices for Healthy Children Council, composed of three individuals from each of the following organizations:

- (1) Ohio Children's Hospital Association;
- (2) Ohio Chapter of the American Academy of Pediatrics;
- (3) Ohio Business Roundtable;
- (4) Ohio Action for Healthy Kids;
- (5) American Heart Association;
- (6) Representatives of school districts whose job responsibilities involve promoting student health and wellness, recommended by the Ohio School Boards Association.

Except as indicated, the organizations are to submit recommendations for appointments to the Council, and the Governor, Senate President, and Speaker of the House of Representatives are each to select one individual from each organization.

Members are to be appointed within 30 days after the bill's effective date and serve at the pleasure of the appointing authority. Vacancies are to be filled in the same manner as the original appointment. Members are not to be compensated. A representative of the Ohio Business Roundtable is to call the first meeting of the Council, at which time the Council is to select a chairperson from among its members. The chairperson is to call subsequent meetings. The organization represented by the chairperson is required to provide administrative support to the Council.

The Council is required to do all of the following:

- (1) Monitor progress in improving student health and wellness;
- (2) Make periodic policy recommendations to the State Board of Education regarding ways to improve the nutritional standards for food and beverages for sale at schools (see "**School nutrition requirements**," above);
- (3) Make periodic recommendations to the Department of Education for the development of the best practices clearinghouse;

(4) Assist the Department in developing a list of resources regarding health risks associated with weight status for distribution to parents and guardians under the body mass screening requirements (see "**Body mass screening**," above);

(5) Regularly review developments in science and nutrition to ensure the Council remains informed for purposes of making its recommendations described in (2) and (3), above.

Annual report

(R.C. 3301.922)

The Department of Education is required by the bill to issue an annual report on all of the following:

(1) The compliance of public and chartered nonpublic schools with the requirements established by the bill for nutritional standards for food and beverages in schools;¹⁴

(2) The compliance of public schools with the requirement of the bill regarding daily physical activity and body mass screenings;¹⁵

The Department is to include in each report any data regarding student health and wellness collected by the Department in preparing the annual report. The Department is to submit the report to the Governor, the General Assembly, and the Healthy Choices for Healthy Children Council.

HISTORY

ACTION	DATE
Introduced	11-17-09

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¹⁴ Though STEM schools and community schools are required to meet these requirements, their information is not required to be included in the annual report.

¹⁵ Though charter schools, STEM schools, and community schools are required to meet these requirements, their information is not required to be included in the annual report.