



Ohio Legislative Service Commission

Bill Analysis

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H.B. 255

129th General Assembly
(As Introduced)

Reps. Gonzales, Murray, Stebelton

BILL SUMMARY

- Requires school districts and community schools to provide a school breakfast program in every school rated "academic emergency" and to include implementation of that program in its federally required academic improvement plan, but allows a district or community school to opt out for financial reasons.
- Requires school districts and community schools that are excused from providing an otherwise required school breakfast, lunch, or summer food program to develop plans to eventually provide such programs.

CONTENT AND OPERATION

School districts

Overview

The following chart summarizes current law and the bill's provisions with respect to school districts:

Meal Programs in School Districts¹

	Where Program is Mandatory		Circumstances Excusing the District from Offering Program	
	Current Law	The Bill	Current Law	The Bill
School Breakfast	In every school where at least $\frac{1}{5}$, but less than $\frac{1}{3}$, of the students meet federal	Same, plus in every school that was rated in academic emergency on the	The district board of education unilaterally may opt out if it	Same, but also requires the district board to develop a financial viability

¹ R.C. 3313.813(C).

	Where Program is Mandatory		Circumstances Excusing the District from Offering Program	
	Current Law	The Bill	Current Law	The Bill
	guidelines for free breakfast.	report card issued in the prior school year.	determines that it cannot comply for financial reasons.	plan that will enable it to comply within two years.
School Breakfast	In every school where either (1) at least $\frac{1}{3}$ of the students meet federal guidelines for free breakfast or (2) the parents of at least $\frac{1}{2}$ of the students request that a breakfast program be established.	Same.	The district board may not unilaterally opt out, but the State Board of Education may grant the district, "for good cause," an extension of time to comply. "Good cause" may include "economic impossibility of compliance."	Same, but also directs the State Board to require the district board to submit a plan that will enable the district to comply as soon as the extension expires. However, the State Board may renew the extension if the district remains unable to comply.
School Lunch	In every school where at least $\frac{1}{5}$, but less than $\frac{1}{3}$, of the students meet federal guidelines for free lunch.	Same.	The district board unilaterally may opt out if it determines that it cannot comply for financial reasons.	Same, but also requires the district board to develop a financial viability plan that will enable it to comply within two years.
School Lunch	In every school where at least $\frac{1}{3}$ of the students meet federal guidelines for free lunch.	Same.	The district board may not unilaterally opt out, but the State Board may grant the district, "for good cause," an extension of time to comply. "Good cause" may include "economic impossibility of compliance."	Same, but also directs the State Board to require the district board to submit a plan that will enable the district to comply as soon as the extension expires. However, the State Board may renew the extension if the district remains unable to comply.

	Where Program is Mandatory		Circumstances Excusing the District from Offering Program	
	Current Law	The Bill	Current Law	The Bill
Summer Meal Program	If the district is offering summer intervention services mandated by law, it must offer either (1) a breakfast program, (2) a lunch program, or (3) a summer food service program.	Same.	The district board unilaterally may opt out if it determines that it cannot comply for financial reasons.	Same, but also requires the district board to develop a financial viability plan that will enable it to comply within two years.

Breakfast programs in academic emergency schools

The bill requires each school district to provide a school breakfast program in every school that was rated in academic emergency in the last ratings of school buildings published prior to the school year.² For instance, the ratings published in August 2011, reflecting the 2010-2011 school year, would be used to determine whether, and in which schools, a district must offer a breakfast program in the 2012-2013 school year.

However, a district board of education may opt out of providing breakfast programs in academic emergency schools if it determines that it cannot do so "for financial reasons." This authority for a district board unilaterally to opt out for financial reasons is provided by current law for schools where less than one-third of the students are eligible for free breakfast. As under current law, a district that opts out must communicate that decision to its residents, in the manner it determines appropriate. But the bill requires a district board that opts out to develop a "financial viability plan" that will enable it to comply within two years (see "**Financial plans to enable compliance**" below).³

Inclusion of breakfast program in academic improvement plan

In addition, the bill requires the district board to include the implementation of a breakfast program in academic emergency schools as part of its improvement plan, if it

² R.C. 3313.813(C)(1).

³ R.C. 3313.813(C)(5)(a).

is required to have such a plan under the Ohio Department of Education's implementation of the federal No Child Left Behind Act. The district board must consult with administrative employees responsible for food service in doing so, and must incorporate "best practices" for school breakfast programs. However, if the district opts out of providing breakfast for financial reasons, it need not include implementation of a breakfast program in its improvement plan.⁴

Financial plans to enable compliance

In situations of unilateral opt-out

If a district board unilaterally opts out of providing a required meal program because the board determines it cannot do so for financial reasons, the bill requires the board to develop a "financial viability plan that will enable the board to comply within two years." The bill does not explicitly require a district to file the plan with the Department of Education, but the State Board presumably could require filing in its role as Ohio's administrator of the federal school meal programs. Nor does the bill explicitly require a district actually to begin offering the meal programs within two years.

A district unilaterally may opt out of programs, as follows:

- (1) A breakfast program that is otherwise required by the bill because the school was rated in academic emergency;
- (2) A breakfast program in a school where less than one-third of the students qualify for federal free breakfast, and parents of less than one-half of the students have requested it (current law);
- (3) A lunch program in a school where less than one-third of the students qualify for federal free lunch (current law); and
- (4) A summer meal program if mandated summer academic intervention services are being offered (current law).

The bill requires a financial viability plan when a district opts out under any of those scenarios.⁵

In situations requiring a State Board extension

When the proportion of students eligible for free breakfasts or lunches reaches certain thresholds, current law does not permit a district board to unilaterally opt out of

⁴ R.C. 3313.813(C)(1) and (5)(a).

⁵ R.C. 3313.813(C)(5)(a).

providing a breakfast or lunch program, but allows it to seek a "reasonable extension of time" from the State Board before it must comply. Current law authorizes the State Board to grant an extension for "good cause," and considers good cause to include "economic impossibility of compliance." The bill retains these stipulations, but further directs the State Board to require the district to develop, and submit to the Department, a plan that will enable the district to comply when the extension expires. But the bill permits the State Board to renew the extension if the district remains unable to comply when the extension expires.

A district board may not unilaterally opt out of providing a breakfast or lunch program in schools where one-third or more of the students meet federal guidelines for a free meal. Likewise, a district board may not unilaterally opt out of providing a breakfast program in schools where the parents of at least half of the students request a breakfast program.⁶

Community schools

Like school districts, the bill requires a community school to provide a school breakfast program if it was rated in academic emergency in the last ratings of school buildings published prior to the school year. In addition, the governing authority of the community school must include the implementation of a breakfast program in its improvement plan, if it is required to have a plan. As with school districts, the plan must incorporate "best practices" for school breakfast programs.⁷

Likewise, the bill also requires the governing authority of a community school required but financially unable to provide a school breakfast, school lunch, or a summer extension food program to develop a financial viability plan that will enable it to offer the programs within two years. Unlike school districts, community schools are not required under current law to implement school breakfast or lunch programs based on parent request, nor must they seek a State Board exemption to opt out of providing a meal program.⁸

Background – current law

The Ohio Department of Education, in conjunction with the U.S. Department of Agriculture, administers the National School Lunch and School Breakfast programs under the federal "National School Lunch Act" and "Child Nutrition Act of 1966."⁹

⁶ R.C. 3313.813(C)(5)(b) and (c).

⁷ R.C. 3314.18(A).

⁸ R.C. 3314.18(C).

⁹ 42 United States Code (U.S.C.) 1751 and 1771.

Under current federal guidelines, students from families with incomes at or below 185% of the federal poverty guidelines are eligible for reduced price meals, and students from families with incomes at or below 130% of the federal poverty guidelines are eligible for free meals.¹⁰ Children who receive Temporary Assistance to Needy Families (TANF), Food Stamps, or who are homeless, runaways, or migrants are also eligible for free lunch.¹¹

School districts

Under Ohio statute, each school district must establish and maintain a school breakfast program in every school where at least one-fifth of the students qualify for free breakfast, and a lunch program in every school where at least one-fifth of the students qualify for free lunch under federal law. However, if the board of education of a school district determines that it cannot afford to offer a school breakfast or lunch program, the board may opt to not offer either program, but must communicate this decision publicly to residents of the district in the manner the board deems appropriate.¹²

Nevertheless, this opt-out is not available with respect to any school where at least one-third of the students qualify for free breakfast or free lunch. In that case, the district must provide the program at that school, though it may charge for reduced-price or paid breakfasts to cover incurred costs. School districts also must establish breakfast programs in schools where the parents of at least one-half of enrolled students have requested one. In this case, schools may charge for each breakfast to cover costs incurred from the program. If a school district for good cause (including economic impossibility of compliance) cannot provide meals under the one-third requirement or by parent request, the State Board of Education must grant an extension of time to comply.¹³

Community schools

Community schools (often called "charter schools") also must provide a breakfast program if at least one-fifth of the students qualify for free breakfast, and a lunch program if at least one-fifth of the students qualify for free lunch under federal law. The governing authority of a community school required to establish a breakfast program may charge for each reduced-price or paid breakfast to help cover costs.

¹⁰ <http://www.fns.usda.gov/cnd/governance/notices/iegs/iegs.htm> and Federal Register, Vol. 76, No. 58.

¹¹ 42 U.S.C. 1758.

¹² R.C. 3313.813(C)(1), (3), and (5)(a).

¹³ R.C. 3313.813(C)(2) and (5)(b) and (c).

However, if the governing authority determines that it cannot provide meals due to financial reasons, it may choose not to, but must communicate this choice to all parents of its students in the manner it deems appropriate. Internet- or computer-based community schools ("e-schools") are not required to provide meal programs.¹⁴

HISTORY

ACTION	DATE
Introduced	06-08-11

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¹⁴ R.C. 3314.18.

