



# Ohio Legislative Service Commission

## Bill Analysis

Carrie Burggraf

### Am. H.B. 334

130th General Assembly  
(As Passed by the House)

**Reps.** Hayes and Hottinger, Brenner, Becker, Butler, Amstutz, Beck, Blair, Brown, Buchy, Burkley, Conditt, Green, Hill, Lynch, Young, Batchelder

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## BILL SUMMARY

- Permits the board of education of a school district, the governing authority of a community school, or the governing body of a STEM school to establish a policy that authorizes the district superintendent, or equivalent of the community or STEM school, to expel a student for not more than 180 school days for actions that pose "imminent and severe endangerment to the health and safety" of other students or school employees.
- Requires the superintendent to develop conditions for a student expelled for imminent and severe endangerment to satisfy before that student may be reinstated, one of which must be an assessment by a psychiatrist, psychologist, or school psychologist to determine whether the student poses a danger.
- Requires a copy of the conditions for reinstatement to be provided in writing at the beginning of the expulsion period to the district or school board, the student, and the student's parent, guardian, or custodian.
- Requires the superintendent to assess the student at the end of the expulsion period to determine whether the student has shown "sufficient rehabilitation" to be reinstated and permits the superintendent to extend the expulsion for another period not to exceed 90 school days, subject to further reassessment and extensions.
- Specifies that cost of the assessment, if done by a psychiatrist, psychologist, or school psychologist employed or contracted by the district or school, be paid by the district or school.
- Specifies that cost of the assessment, if done by a psychiatrist, psychologist, or school psychologist who is not employed or contracted by the district or school, be

referred for payment to the student's health insurance, and any remainder be split equally between the district or school and the student's parent, guardian, or custodian.

- Expressly makes all determinations by a superintendent regarding an expulsion for imminent and severe endangerment subject to the same notification requirements and appeals process as other types of expulsions under current law.
- Requires the superintendent, within five days after an expulsion for imminent and severe endangerment, to develop a plan for the continued education of the student during the expulsion period.
- Requires the district or school board to (1) specify reasons for which the superintendent may reduce an expulsion period on a case-by-case basis, (2) establish guidelines regarding appropriate conditions that the superintendent may develop for an expelled student to satisfy prior to that student's reinstatement, and (3) develop a list of alternative educational options for students expelled for imminent and severe endangerment.

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## CONTENT AND OPERATION

### Expulsion of a student for imminent and severe endangerment

The bill permits the board of education of a school district, the governing authority of a community school, or the governing body of a STEM school to adopt a resolution establishing a policy that authorizes the district superintendent, or equivalent of a community or STEM school, to expel a student from school for not more than 180 school days for actions that the superintendent determines pose "imminent and severe endangerment to the health and safety" of other students or school employees.<sup>1</sup> The bill specifically states that such an expulsion may be sought even if the student's actions do not qualify for permanent exclusion from the Ohio public school system by the state Superintendent (see "**Permanent exclusion**" below).

If the superintendent expels a student under the bill, the superintendent is required to develop conditions for the student to satisfy before that student may be reinstated. A copy of the conditions must be provided in writing at the beginning of the expulsion period to the district's or school's board, the student, and the student's

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<sup>1</sup> R.C. 3313.66(B)(6) and 3313.661. R.C. 3313.66 and 3313.661 are applicable to community schools by reference in R.C. 3314.03 and to STEM schools by reference in R.C. 3326.11, neither in the bill.



parent.<sup>2</sup> The district's or school's board is required to establish guidelines for appropriate conditions (see "**Duties of the board**" below).<sup>3</sup>

Additionally, the bill specifically requires that one of the conditions for reinstatement must be an assessment to determine whether the student poses a danger to the student's self, other students, or school employees. The assessment must be completed by a psychiatrist, psychologist, or school psychologist, who is agreed upon by both the district and the student's parent.

(For the purposes of this analysis, the term "parent" means the student's parent, guardian, or custodian.)

### **Assessment of an expelled student**

At the end of the expulsion period, the superintendent must assess the student to determine whether the student has shown "sufficient rehabilitation" to be reinstated.<sup>4</sup> If the student has not, the superintendent may extend the expulsion for another period of not longer than 90 school days.<sup>5</sup> When making a determination on reinstatement, the superintendent must take into consideration both (1) the assessment that was completed by the psychiatrist, psychologist, or school psychologist, and (2) whether or not the student met the conditions developed by the superintendent.<sup>6</sup>

### **Extended expulsion periods**

If the superintendent determines that the student has not shown "sufficient rehabilitation" and extends the expulsion period, the superintendent must develop a new set of conditions for the student to satisfy before that student may be reinstated. These conditions may be the same conditions that the superintendent developed for the original expulsion period. The superintendent again must provide these conditions in writing to the district board, the student, and the student's parent at the beginning of the extended expulsion period.

At the end of the extended expulsion period, the superintendent must reassess the student in the same manner as for the original expulsion period and determine whether the student has shown "sufficient rehabilitation" to be reinstated. As with the

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<sup>2</sup> R.C. 3313.66(B)(6).

<sup>3</sup> R.C. 3313.661(E)(1).

<sup>4</sup> R.C. 3313.66(B)(6)(a).

<sup>5</sup> R.C. 3313.66(B)(6)(a)(ii).

<sup>6</sup> R.C. 3313.66(B)(6)(a).



original expulsion period, if the student has not, the superintendent may extend the expulsion for another period not to exceed 90 school days. The bill expressly states that there is no limit on the number of times the superintendent may choose to extend an expulsion.<sup>7</sup>

### **Early assessment and reduction of an expulsion period**

Prior to the end of the original expulsion period or of an extended expulsion period, the student or the student's parent may request that the superintendent complete an early assessment of the student. If such a request is made, the superintendent must complete an assessment and make a determination in the same manner as would apply at the end of the expulsion period. The student or the student's parent may request an early assessment only once for the original expulsion period and only once for each extended expulsion period.<sup>8</sup>

Additionally, the bill permits the superintendent to reduce a student's expulsion on a case-by-case basis prior to the end of the original expulsion period or of an extended expulsion period, if that student has met all of the conditions developed by the superintendent at the beginning of the expulsion period.<sup>9</sup>

In making either of the above determinations, the superintendent must comply with the district or school board's policy regarding the reduction of an expulsion period (see "**Duties of the board**" below).

### **Payment for assessment**

The bill prescribes the following payment structure for the assessment completed by a psychiatrist, psychologist, or school psychologist, as a required condition for reinstatement, to determine whether the student poses a danger to that student's self, other students, or school employees:

(1) If the psychiatrist, psychologist, or school psychologist is employed or contracted by the district, the district must pay in full for the cost of that assessment.

(2) If the psychiatrist, psychologist, or school psychologist is not employed or contracted by the district, the cost of that assessment must be referred for payment to the student's health insurance. Following referral, any costs that are not covered by the

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<sup>7</sup> R.C. 3313.66(B)(6)(b).

<sup>8</sup> R.C. 3313.66(B)(6)(d).

<sup>9</sup> R.C. 3313.66(B)(6)(c).

student's health insurance must be split equally between the district and the student's parent.<sup>10</sup>

Additionally, because the bill requires the superintendent to assess a student during an early assessment or at the end of an extended expulsion period in the same manner as for the original expulsion period (see "**Extended expulsion periods**" and "**Early assessment and reduction of an expulsion period**" above), this payment structure presumably would apply to the required assessment completed by a psychiatrist, psychologist, or school psychologist for either of these circumstances.

### **Due process**

A student subject to an expulsion authorized by the bill is entitled to the same due process procedures as a student subject to any other type of expulsion under current law. Therefore, when making any determination in regard to an expulsion for imminent and severe endangerment, the superintendent must comply with all of the notification requirements that currently apply to other types of expulsions.<sup>11</sup> Similarly, any determination made by the superintendent regarding such an expulsion is subject to the same appeals process as other types of expulsion under current law.<sup>12</sup> Any determination made by the superintendent regarding such an expulsion is subject to these requirements, including not only the decision to expel a student, but also the decision whether to reinstate the student or to extend the expulsion period.

The due process procedures of current law are described below.

### **Required notifications**

Prior to expelling a student for imminent and severe endangerment under the bill, current law requires the superintendent to (1) give the student and the student's parent written notice of the intention to expel the student and the reasons for the expulsion and (2) provide the student and the student's parent an opportunity to appear before the superintendent to challenge the expulsion. The required notice must include specified information, such as the reasons for the intended expulsion, notification of the opportunity to appear before the superintendent to challenge these reasons, and notification of the time and place to appear, which must be between three and five days after the notice is given, unless the superintendent grants an extension.<sup>13</sup>

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<sup>10</sup> R.C. 3313.66(B)(6), second paragraph.

<sup>11</sup> R.C. 3313.66(B)(6)(a).

<sup>12</sup> R.C. 3313.66(B)(6)(f).

<sup>13</sup> R.C. 3313.66(B)(7).



Additionally, within one school day after a student begins serving an expulsion, the superintendent must provide written notification of the expulsion to the student's parent and the district or school treasurer or fiscal officer. The notice must (1) explain the reasons for the expulsion, (2) inform the parent of the right of the parent or student to appeal the expulsion to the district or school board, and (3) state that the expulsion may be subject to extension and the superintendent may seek the student's permanent exclusion, if applicable. When a student is expelled for more than 20 school days or for a period covering more than one semester or school year, the superintendent must provide information about public and private agencies that offer programs to improve the behavioral problems that contributed to the student's expulsion.<sup>14</sup>

### **Appeals process**

Similarly, the student or the student's parent may appeal an expulsion for imminent and severe endangerment to the district or school board under the provisions of current law. Accordingly, if the expulsion is appealed, the board must conduct a hearing before the board, or its designee, regarding the expulsion. At the request of the student or the student's parent or attorney, the board may hold the hearing in executive session, but the board still must make its finding only at a public meeting. The board, by a majority vote of its full membership or by the action of its designee, may (1) affirm the order of expulsion, (2) reinstate the student, or (3) otherwise reverse, vacate, or modify the order of expulsion. The board's decision is appealable to the court of common pleas where the district or school is located.<sup>15</sup>

### **Plan for the continued education of an expelled student**

The bill requires the superintendent to develop a plan for the continued education of a student who is expelled for imminent and severe endangerment. The plan may include educational options such as an alternative school operated by the district or school, instruction at home, enrollment in another public or nonpublic school, or any other form of instruction that complies with the compulsory school attendance law. In developing the plan, the superintendent must consult with the student and the student's parent. The plan must be developed within five days after the beginning of the original expulsion period or of any extended expulsion period.<sup>16</sup>

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<sup>14</sup> R.C. 3313.66(D).

<sup>15</sup> R.C. 3313.66(E).

<sup>16</sup> R.C. 3313.66(B)(6)(e).

## Duties of the board

If a district or school board adopts a resolution authorizing the superintendent to expel a student for imminent and severe endangerment, the board is required to do three things. First, the board must specify reasons for which the superintendent may reduce an expulsion period on a case-by-case basis (see "**Early assessment and reduction of an expulsion period**" above).<sup>17</sup> Second, the board must establish guidelines regarding appropriate conditions that the superintendent may develop for a student to satisfy prior to that student's reinstatement (see "**Expulsion of a student for imminent and severe endangerment**" above).<sup>18</sup> Finally, the board must develop a list of alternative educational options for students who are expelled under this new provision, presumably for use by the superintendent when developing a plan for the continued education of an expelled student (see "**Plan for the continued education of an expelled student**" above).<sup>19</sup>

## Current law on removing students from school for disciplinary reasons

Current law provides some mechanisms for removing students from a public school for disciplinary reasons, including suspension, expulsion, reassignment, emergency removal, and permanent exclusion. Under current law, each school district, community school, and STEM school must adopt a code of conduct for the district or school and policies for the enforcement of that code.<sup>20</sup> A student that is subject to suspension, expulsion, or permanent exclusion is entitled to specific due process procedures *prior* to imposition of the discipline, as well as an appeals process. However, in the case of emergency removal, which is temporary in nature, the student is entitled to due process following the imposition of the disciplinary action.

### Suspension and expulsion

The district superintendent or school principal may "suspend" a student for up to ten school days for minor violations of the district's or school's code of conduct.<sup>21</sup> The superintendent (and not a principal) may also "expel" a student for up to the greater of 80 school days or the remainder of the school term for more serious violations of that

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<sup>17</sup> R.C. 3313.661(A).

<sup>18</sup> R.C. 3313.661(E)(1).

<sup>19</sup> R.C. 3313.661(E)(2).

<sup>20</sup> R.C. 3313.661(A).

<sup>21</sup> R.C. 3313.66(A).



code.<sup>22</sup> In addition, the superintendent must expel a student for one full year for *carrying* a firearm to school and, depending upon board policy, may expel a student for one full year for possessing a firearm or knife at school or a school-sponsored activity, for causing serious physical harm to persons or property at school or a school-sponsored activity, or making a bomb threat to a school or school-sponsored activity.<sup>23</sup>

The law also provides for due process procedures that must be followed in the case of these disciplinary actions. In general, suspensions and expulsions require prior notice to the student and the student's parent and an opportunity for the student to explain the student's actions. Suspensions and expulsions may be appealed to the district board of education, and, if applicable, the court of common pleas.<sup>24</sup> (For a more detailed explanation on the current law regarding these due process procedures, see "**Due process**" above.)

### **Reassignment to an alternative school**

School districts are specifically authorized to remove students with disciplinary or academic problems from their home schools and place them in an alternative school established by the district. An alternative school may serve students who are on suspension, are truant, are failing academically, have a history of class disruption, have been discharged from the custody of the Department of Youth Services, or exhibit other academic or behavioral problems.<sup>25</sup> The "Big-Eight" school districts (Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown) and school districts with significantly substandard graduation rates are required to operate at least one alternative school, but any school district is authorized to establish an alternative school.<sup>26</sup> Each district operating an alternative school must develop a plan for the school that includes the reasons for which students may be admitted to the school and criteria and procedures for returning students to their home schools.<sup>27</sup>

### **Emergency removal**

If a student's presence poses a continuing danger to persons or property or an ongoing threat to the academic process, the superintendent or principal may

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<sup>22</sup> R.C. 3313.66(B)(1).

<sup>23</sup> R.C. 3313.66(B)(2) to (5).

<sup>24</sup> R.C. 3313.66(B)(7), (D), and (E).

<sup>25</sup> R.C. 3313.533(A)(1), not in the bill.

<sup>26</sup> R.C. 3313.534, not in the bill.

<sup>27</sup> R.C. 3313.533(A)(3), not in the bill.





temporarily remove a student from curricular activities or the school premises without first providing the student with notice and an opportunity for a hearing. However, the student must be notified in writing of the reasons for the removal and receive a hearing within three school days after the removal. This hearing must be conducted in the same manner as a suspension hearing, except that if the student will likely be expelled, the hearing must comply with the expulsion procedures.<sup>28</sup>

### **Permanent exclusion**

The Superintendent of Public Instruction may issue an adjudication order that permanently excludes a student from attending any public school in Ohio if the student is convicted of or adjudicated a delinquent child for committing, when the student was 16 or older, a permanent exclusion violation. A permanent exclusion violation is any of the following acts: (1) conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone, (2) carrying a concealed weapon, drug trafficking, or drug possession (other than a minor drug possession offense) that was committed on school district property or at a district-sponsored activity, (3) aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, rape, gross sexual imposition, or felonious sexual penetration that was committed on school district property or at a district-sponsored activity, if the victim was a district employee, or (4) complicity in any act described in (1) to (3), regardless of where the act of complicity occurred.

A student's permanent exclusion lasts until the state Superintendent issues an adjudication order revoking the permanent exclusion.

The decision of the state Superintendent to permanently exclude a student is subject to appeal to the appropriate court of common pleas.<sup>29</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	11-06-13
Reported, H. Education	02-20-14
Passed House (70-27)	03-19-14

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<sup>28</sup> R.C. 3313.66(C).

<sup>29</sup> R.C. 3301.121 and 3313.662, neither in the bill.

