

IN THE SUPREME COURT OF OHIO

The Electronic Classroom of Tomorrow,	:	
	:	Case No. 2017-0913
Plaintiff-Appellant,	:	
	:	On appeal from the
vs.	:	Franklin County Court
	:	of Appeals, Tenth District
Ohio Department of Education,	:	
	:	Court of Appeals
Defendant-Appellee.	:	Case No. 16AP-863

**REPLY BRIEF OF PLAINTIFF-APPELLANT
THE ELECTRONIC CLASSROOM OF TOMORROW**

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INTRODUCTION

Simply put, ODE seeks justification for its unilateral expansion of its statutory authority in the wrong forum. Current ODE officials and current Members of the Ohio Senate and House Democratic Caucuses (the “Democrat Amici”) clearly desire to impose something other than an enrollment-based school funding standard, at least in the eschool context. In doing so, they seek to **expand** ODE’s statutory authority, based on their perception of what qualifies as good “public policy,” and ask this Court to endorse such administrative policy-making after-the-fact. But, the expansion of an agency’s authority is an issue for the **legislature**; and ODE is bound by and must act consistent with those powers—and **only** those powers—expressly conferred upon it by statute. On its face, R.C. 3314.08 does not empower ODE to fund eschools on the basis of anything other than enrollment.

The Democrat Amici implicitly concede this. Their counsel of record, Senator Joseph Schiavoni, has proposed legislation that would **expressly authorize** ODE to fund eschools not sponsored by a traditional school district on the basis of actual student participation. But, that language is found nowhere in the current statute, and thus, the proposed legislation simply affirms what the legislature could have done (but did not do), had it actually intended to fund eschools on the basis of actual participation.

Thus, the “public policy” argument asserted by both ODE and the Democrat Amici proves ECOT’s point. [ODE Brief, at 29; Democrat Amici Brief, at 20.] ODE’s mid-school-year-reversal, in 2016, of its 13-plus-year practice of basing eschools’ (like all other schools’) funding on **enrollment** was not derived from the language of the community school funding statute, R.C. 3314.08. That language has, in pertinent part,

remained substantially the same since 2005. Tellingly, neither ODE nor the Democrat Amici even attempt to (and, in the case of the Democrats, specifically decline to) explain when “durational” information became required for eschool funding.

- **The Legislative Language Only Authorizes An Enrollment-Based Funding Formula.**

The only explanation is that imposition of a duration-based standard was **never** authorized, let alone contemplated, by the legislature. But, that is inconsistent with, and therefore inconvenient to, ODE’s effort to manufacture an after-the-fact justification for its **policy-based** attempt to unilaterally change the eschool funding methodology. Such action by an agency usurps the legislative function and runs afoul of the constitutional doctrine of separation of powers. It must be rejected. [ECOT Brief, at 23-26.]

Faced with this authority, ODE resorts to selective citation and omission in attempting, unsuccessfully, to twist the language of R.C. 3314.08 to justify its desired result. But, as ECOT noted in its Opening Brief and further explained below, the plain and unambiguous language of the statute, and its repeated and express references to an **enrollment**-based funding methodology for **all** community schools, betrays ODE’s effort to administratively rewrite its **limited statutory authority** under R.C. 3314.08.

- **ODE Misapplies The Doctrine Of Regulatory Deference In An Attempt To Justify Its Unlawful Expansion Of Administrative Authority.**

Perhaps that is why ODE, in a final grasp at validation, asks for blind deference to its interpretation, not of a technical or industry-specific statutory term, but of the scope/extent of its **own legislatively-delegated authority** under R.C. 3314.08. No such deference is warranted, and ODE’s plea runs counter to this Court’s holding that “all powers of governmental agencies are legislatively granted, and such agencies have

only such regulatory authority as is granted, and the acts of such **agency may not exceed such authority** or be in direct conflict with the exercise of specific powers granted to state departments for statewide regulatory control.” *Johnson’s Mkt., Inc. v. New Carlisle Dep’t of Health*, 58 Ohio St.3d 28, 36, 567 N.E.2d 1018 (1991) (emphasis added). Any doubt or ambiguity as to the extent of such power or authority **must be resolved against the agency**. [ECOT Brief, at 24-25.]

Here, because ODE’s statutory authority to “adjust” an eschool’s funding is clearly limited to “**enrollment** of students in community schools for less than the equivalent of a full school year[.]” ODE’s effort to impose an eschool durational standard **plainly exceeds its statutory authority**. R.C. 3314.08(H). It should be rejected.

ARGUMENT

A. Section 3314.08 Plainly Authorizes ODE To “Adjust” A Community School’s Funding *Only* On The Basis Of Enrollment.

Irrespective of what ODE may currently believe to be good public policy, the basic question presented in this appeal remains whether Section 3314.08 **authorizes or empowers** ODE to adjust or reduce the funding provided to eschools based on a durational standard. If not, then ODE’s imposition of such a standard (and concomitant funding reductions) is unauthorized, and therefore, unlawful. See, e.g., *Johnson’s Mkt.*, 58 Ohio St.3d at 36.

The answer to this dispositive question is supplied by the plain and unambiguous language of the statute: ODE’s delegated **authority** to review, adjust, and/or reduce the funding it is required to provide to a community school (including an eschool) under R.C. 3314.08(C) is limited to the “**enrollment**” of students for less than a full school year. As a result, ODE’s imposition of a durational funding standard is **unauthorized**.

- **Enrollment Is The Only Basis Upon Which ODE Is Authorized To Reduce A Community School’s Funding Under R.C. 3314.08(H).**

Section 3314.08(H) makes this clear: “[T]he department of education shall adjust the amounts subtracted and paid under division (C) of this section **to reflect any enrollment of students in community schools for less than the equivalent of a full school year.**” (Emphasis added.) No other type of “adjustment”—whether based on durational data or otherwise—is provided for in, and thus, authorized under, the statute.

Such a rule makes sense given that, as this Court has recognized, the “money follows the child.” *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Edn.*, 111 Ohio St.3d 568, 2006-Ohio-5512, 857 N.E.2d 1148, ¶ 36 (emphasis added). That basic premise would be defeated by ODE’s proffered durational methodology whereby it seeks to claw back—and **presumably keep for itself**—funding for students who are undisputedly **enrolled** in an eschool, and **not** in their residential districts.

- **Enrollment Is The Only Basis Upon Which ODE Is Authorized To Conduct An FTE Review under R.C. 3314.08(K)(1).**

That ODE’s authority is limited to **enrollment**-based adjustments is further confirmed by the department’s statutory authority to conduct FTE reviews which, again, is **limited to enrollment**. Section 3314.08(K)(1) states that “[i]f the department determines that a review of a community school’s **enrollment** is necessary, such review shall be completed and written notice of the findings shall be provided [to the school and sponsor]” (Emphasis added.) No statutory authority exists for ODE to conduct such a “review” based on durational data.

- **The Rest Of Section 3314.08—including The 105-Hour Rule Applicable To Eschools—Makes Clear That Enrollment, And Not Duration, Is The Community School Funding Standard.**

This enrollment-based funding authority is consistent with the rest of R.C. 3314.08. That includes Section 3314.08(H)(2), which expressly defines “enrollment” as the period between which a student completes necessary paperwork and/or “**commence[s]** participation in learning activities” and one of three, specified events **not tied to duration**. (Emphasis added.) It also includes Section 3314.08(H)(3), which establishes an FTE calculation formula based on “**offered**”—not “received”—learning opportunities. (Emphasis added.)

The specified enrollment-based methodology also directly dovetails with the 105-hour rule found in Section 3314.08(H)(2), which ODE tries to minimize as a mere “paperwork” reduction rule. That provision specifically states that, as to a student enrolled in an eschool for the prior year, ODE “**shall** continue subtracting [from traditional districts] **and paying amounts** for the student under [R.C. 3314.08(C)] without interruption at the start” of a new school year. See R.C. 3314.08(H)(2) (emphasis added). The same provision then states that ODE is to “recalculate the payments to the school for that school year” “**if** the student without a legitimate excuse fails to participate in the first one hundred five consecutive hours of learning opportunities offered to the student in that subsequent school year” *Id.* (emphasis added).

This provision necessarily means that no “recalculation” of funding is warranted, and thus, ODE “**shall**” continue to pay an eschool **full funding** under Section 3314.08(C), so long as the student “participates” sometime within the first 105 hours of the school year. In other words, an eschool is entitled to full funding for the first 105 hours of “**offered**” learning opportunities so long as a student participates **at some**

point therein. It necessarily follows, then, that an eschool cannot be **docked** funding for any time in which such a student did not participate. This provision, thus, can only be read in the context of enrollment-based funding, lest it be rendered meaningless.

B. Nothing In Section 3314.08—including Discrete And Irrelevant References To “Participation”—Supports, Let Alone Clearly Authorizes, The Imposition Of An Eschool-Specific Durational Funding Standard.

Ignoring large swaths of the statute (including the above-quoted provisions), both ODE and the Democrat Amici remarkably assert that Section 3314.08 “clear[ly],” indeed, “incontrovertibl[y]” establishes a duration-based funding methodology. Specifically, both contend that the statute establishes a two-part funding test, although they describe it differently—a fact that, standing alone, cuts against the supposed “clarity” of the purported statutory authorization. ODE and the Democrat Amici can’t even agree on what it means. ODE proffers that enrollment is a “predicate” to funding for a given student, but the actual amount of such funding is established by durational information. [See ODE Brief, at 32.] The Democrat Amici, on the other hand, assert that Section 3314.08 establishes a “two-prong formula for full-time equivalency-based funding for eschools: the percentage of the year during which the student is enrolled and the percentage of learning opportunities participated in by the student.” [Democrat Amici Brief, at 15.]

Neither, however, points to a specific provision in Section 3314.08 that expressly lays out this purported test or “formula.” As the Court can readily observe, **no such provision exists**. Instead, both ODE and the Democrat Amici try to piece together discrete statutory references to “participation” in an effort to manufacture a non-existent durational funding test. Such references, however, fail to support their position.

1. **Discrete References To “Participation” In Section 3314.08(H)(2) Do Not Support Application Of A Durational Funding Standard.**

First, ODE attempts to seize upon certain references to “participation” in Section 3314.08(H)(2). However, on their face, those references are merely consistent with the statute’s enrollment-based focus, and otherwise do not authorize the type of minute-by-minute calculation the department has invoked as its new standard for eschools.

- **On its face, the “participation” language in Section 3314.08(H)(2) is consistent with an enrollment-based funding methodology. Such language merely addresses the determination of when a student’s enrollment begins.**

At the outset, the references to “participation” in Section 3314.08(H)(2) are consistent with an **enrollment-based** funding standard. The language at issue states that learning opportunities are defined “in the contract, which shall describe both classroom-based and non-classroom-based learning opportunities and shall be in compliance with criteria and documentation requirements for student participation, which shall be established by the department.” It is contained squarely within a larger provision that defines “enrollment” as beginning when, *inter alia*, a student “**commence[s]** participation in learning opportunities[,]” and ending when a student is withdrawn for one of three non-durational reasons. *Id.* (emphasis added).

Read in context, then, the cited reference to “criteria and documentation requirements for student” participation clearly pertains to the **method or mode by which a student may participate** (i.e., online, in-person, etc.) for purposes of establishing the date when a student’s enrollment—and thus, funding—**begins**. This is, of course, what ODE did in 2003, when it executed the Funding Agreement: identify the method or mode for measuring the commencement of enrollment. [ECOT Brief, at 10-

14.] Such language in no respect authorizes ODE to unilaterally impose an eschool-specific durational funding standard or, more specifically, override the enrollment-specific language found in Sections 3314.08(C), (H), and (K).¹

- **ODE otherwise failed to “establish” any criteria or documentation requirements per R.C. Chapter 119. Therefore, it cannot rely upon the discrete references to “participation” in Section 3314.08(H)(2) as authorizing it to unilaterally and informally implement a brand new funding standard.**

But, even assuming *arguendo* that Section 3314.08(H)(2)’s references to participation were broader in scope, such language affords ODE with no relief because the department failed to **“establish”** any criteria or documentation requirements per R.C. Chapter 119. As described at pages 34-36 of ECOT’s opening brief, ODE is specifically—and uniquely among the various state agencies—required to comply with the Chapter 119 rule-making process in exercising **any** power or function and/or in establishing any “minimum standard.” See R.C. 3301.13.²

¹ Indeed, the quoted reference to “participation” in Section 3314.08(H)(2) is not limited to eschools. Thus, if such reference actually mandated that ODE employ a durational standard as to eschools, then it should apply the same standard to **all** community schools—including brick-and-mortar ones. ODE is, of course, not doing so, nor does it argue that the legislature authorized it to do so.

² ODE correctly notes that the Court did not accept ECOT’s proposition of law as to ODE’s non-compliance with Chapter 119 in imposing a durational funding standard. Nonetheless, ODE has placed such Chapter’s requirements squarely in issue by asserting that the language of Section 3314.08(H)(2) authorized it to bypass those requirements altogether.

Moreover, it is of no moment that, as the Trial Court concluded, ODE’s FTE handbooks contained language that placed eschools on notice that ODE could potentially seek some type of durational information. If the statute did not authorize ODE to impose a durational funding standard, no language contained in an internal handbook can establish such authority. Even then, ODE’s undisputed actions demonstrate that it did not—at least until 2016—construe its own “guidelines” as requiring the department to review and consider durational information.

But, ODE convinced the lower courts that its FTE Handbooks are mere internal “guidelines” that do not bind anyone. It is now judicially estopped from arguing otherwise. Accordingly, ODE does not—and cannot—contend that it has “established” any participation-related “criteria” or documentation requirements via this formal process, as required by the statute. Instead, ODE argues that because Section 3314.08 references participation, the department is automatically entitled to impose a durational standard, even without “establishing” any pertinent criteria or requirements.

Such circular reasoning only further demonstrates the breadth of ODE’s administrative overreach. If ODE is correct, then it can unilaterally decree an expansion of its **substantive authority** without even satisfying the basic requirements of Section 3301.13 and Chapter 119 (including public notice, hearing, and JCARR approval). If that was the case, then Section 3314.08(H)(2)’s requirement that ODE actually “**establish**” standards would be rendered meaningless, as the statute’s mere reference to participation would authorize ODE to do whatever it wants—in violation of the constitutionally-mandate separation of powers.

In short, Section 3314.08(H)(2) and 3301.13 can be read to support ODE’s position **only** if key words are impermissibly ignored. For this additional reason, the reference to “participation” in Section 3314.08(H)(2) does not support ODE’s position.

2. Section 3314.08(H)(2)’s Reference To “Instruction Time” Has Nothing To Do With The Counting Of Participation Hours, And Thus, It Too Is Inapposite.

ODE next seeks refuge in another discrete provision found in the middle of Section 3314.08(H)(2). It states that “[a]ny student’s instruction time in non-classroom based learning opportunities shall be certified by an employee of the community

school.” This provision, likewise, fails to vest ODE with the authority it seeks. Rather, ODE’s long-standing actions and guidance to the Auditor confirm that it is merely consistent with the above-described, enrollment-based methodology.

- **On the face of the statute, “instruction time” cannot mean actual participation time.**

As a matter of basic common sense, this provision has no bearing on ODE’s instant argument because it has nothing to do with actual **participation** time. Indeed, had the legislature intended to refer to participation time, it knew how to do so inasmuch as the word “participating” appears in the **preceding sentence**.

As a result, “instruction time” cannot mean actual participation time. For that reason, alone, the cited language does not support ODE’s position.

- **ODE’s long-standing conduct, and guidance to the Auditor, show that the quoted provision requires a certification of “offered” learning opportunity hours—which is consistent with an enrollment-based funding approach.**

Prior to 2016, this provision was satisfied by ECOT’s preparation of teacher certifications reflecting the number of learning opportunity hours **offered** to each student—a construction **consistent with an enrollment-based funding approach**.

This is clear in multiple respects:

- The pertinent language was added to Section 3314.08 by H.B. 364, which became effective **in 2003**. [Appendix to ECOT’s Opening Brief, at 47 (“APP”).] The parties specifically contemplated and sought to comply with H.B. 364 via the 2003 Funding Agreement between ECOT and ODE. [Tr. Vol. II 9-10.]
- The Funding Agreement expressly stated that students are to be “**presented with**” (i.e., offered) 920 hours of learning opportunities, and that such hours will be “verified by a certificated ECOT employee” [Pl. Exh. 20 (emphasis added).]
- Consistent with the Funding Agreement, and for **approximately 13 years**, ECOT prepared teacher verification forms by which its teachers certified the “**offered educational opportunity**” hours for each student. [Pl. Exh. 27-A (examples of

verification forms) (emphasis added).] Prior to 2016, ODE never took issue with or questioned these forms. Nor did it ever, until 2016, suggest that something more was required under the above-quoted language of Section 3314.08(H)(2).

- ODE specifically advised the Auditor of State's Office that hours "offered" was the proper standard, and that ECOT's teacher verification forms as to "offered" learning opportunity hours **were sufficient to satisfy the same**. [Tr. Vol. IV 22-27.] Marnie Carlisle, Assistant Chief Deputy Auditor, testified that her office had specifically discussed such forms with ODE, and that they were deemed "a sufficient type of documentation to support the hours offered." [*Id.* at 26.]

Now, ODE disingenuously tries to brush aside ECOT's teacher verifications as a "joke." Yet, ECOT was only doing what ODE had **agreed** to accept as verification. The Court can readily see that ODE has long viewed (and expressed its view to the Auditor) that such verifications of **offered** learning opportunity hours satisfy Section 3314.08(H)(2). That is simply consistent with the statute's enrollment-based approach.

3. The "Ten-Hour" Rule In Section 3314.08(H)(3) Does Not Authorize ODE To Impose A Durational Standard.

Both ODE and the Democrat Amici next assert that the so-called "ten-hour rule," added by amendment to now Section 3314.08(H)(3) **in 2005**, requires ODE to consider durational data as a prerequisite to eschool funding. Aside from ODE's timing problem (discussed further below), this argument overstates the pertinent statutory language and betrays ODE's nonsensical attempt to convince the Court that "offer" really means "receive." Section 3314.08(H)(3) states:

(3) The department shall determine each community school student's percentage of full-time equivalency based on the percentage of learning opportunities **offered** by the community school to that student, reported either as number of hours or number of days, is of the total learning opportunities **offered** by the community school to a student who attends for the school's entire school year. **However, no internet- or computer-based community school shall be credited for any time a student spends participating in learning opportunities beyond ten hours within any period of twenty-four consecutive hours.** Whether it reports hours or days of learning opportunities, each community school shall offer

not less than nine hundred twenty hours of learning opportunities during the school year.

[Emphasis added.]

At best, in light of the other enrollment-specific provisions described above (and the reference to “offer” in the preceding sentence), the most ODE can argue is that the term “participating” creates an inconsistency that must be resolved **against** ODE’s asserted grant of power or authority. In fact, however, this language cannot be read in isolation and it is perfectly consistent with an enrollment-based funding methodology.

Given that eschools, like ECOT, “offer” academic content 24 hours per day, this ten-hour rule is plainly designed to **prevent** eschools from utilizing an actual participation/duration measure to claim a full FTE for a student who reaches 920 hours **without being enrolled for the equivalent of a full calendar school year**. This provision is specifically designed to ensure that eschools are funded based on **enrollment—not** duration of participation.

In other words, as ECOT noted in its Opening Brief, the ten-hour rule is designed to ensure that eschools operate on a comparable school year calendar to their brick-and-mortar counterparts. Yet, it also allows for flexibility—i.e., it accounts for the fact that the flexibility offered by an eschool permits a student to work ten hours one day and none the next. It does not, however, authorize ODE to impose an eschool-specific durational funding standard.

4. R.C. 3314.27 Is Not A Funding Statute, And Its Pertinent Language Does Not Support ODE’s Imposition Of A Durational Funding Standard.

Lastly, both ODE and the Democrat Amici additionally cite R.C. 3314.27, as amended by H.B. 2 in 2016, in support of their position. However, as ODE previously

admitted in its Proposed Findings of Fact and Conclusions of Law submitted to the Trial Court, Section 3314.27 is “**not a funding statute**” [R-184, at 23 (emphasis added).] For that reason, alone, such statute is inapposite.

But, in any event, the pertinent language of Section 3314.27 does not support or justify ODE’s imposition of a durational funding standard. On its face, this provision merely requires an eschool to “keep an accurate record of each individual student’s participation in learning opportunities each day.” *Id.* Such a record could consist of a student’s completion of schoolwork, grades, etc. Nothing in the statute suggests that a stopwatch-esque accounting of hours is the **only** type of “record” that would satisfy this **non-funding-related** provision.

5. The Recent Effort Of The Democratic Amici To Amend Section 3314.08 To Expressly Provide For A Durational Funding Standard Belies Their Assertion That The Current Statute “Incontrovertib[ly]” Requires ODE To Impose Such A Standard.

Of course, if the current language of R.C. 3314.08 was truly “incontrovertible”—to quote the Democrat Amici—in authorizing ODE’s conduct, then it stands to reason that no changes would be necessary. Yet, that is precisely what named counsel for the Democrat Amici is currently seeking through proposed legislation in the form of S.B. 39.

That proposed legislation, sponsored by Senator Joseph Schiavoni, counsel of record for the Democrat Amici, would, among other things, change the word “offer” to “provide.” [Supplemental Addendum, at 55 (“SUPP ADD”).] More fundamentally, it would add the following language to Section 3314.08(H)(3):

In the case of an internet- or computer-based community school that is not sponsored by a school district, when determining a student's percentage of full-time equivalency under division (H)(3) of this section, the "percentage of learning opportunities provided by the community student"

shall be equal to the amount of time that the student was actively engaged in learning opportunities during that school year, unless section 3314.088 of the Revised Code applies to the student.

[SUPP ADD-55-56 (emphasis added).]

Remarkably, the proposed legislation sponsored by Senator Schiavoni would exempt traditional district-sponsored eschools from the durational funding requirement. It would do so even though it is the supposed lack of a “visual feedback loop” inherent in the **eschool model**, and not the identity of the sponsor, that is driving ODE’s push for a durational standard. [ODE Brief, at 2.]³

In any event, the highlighted language plainly and unambiguously reflects an engagement- or duration-based standard for eschool funding. Had such language been a part of the funding statute in 2016, we would not be here. But, it wasn’t, and it still isn’t. And the fact that the Democrat Amici have now proposed, but failed—to date—to enact such clear language only emphasizes the **lack of clear authority** for ODE to impose a durational funding standard under the **current** version of Section 3314.08.

³ Even ODE’s reference to the supposed lack of “visual” feedback is unavailing. That is simply a code word for saying that ODE trusts traditional schoolteachers more than eschool teachers to engage students struggling with engagement and/or participation. Such a blanket and derogatory generalization regarding highly-qualified eschool teachers is not only uncalled for (particularly from a regulatory agency), but it also ignores the undisputed record demonstrating the extensive efforts undertaken by **all involved** with ECOT to foster positive student engagement for students who, in many instances, have failed to find success in other schools due to economic status, mobility, bullying, special needs, and other challenges. [Tr. Vol. I 119; Vol. IV 194-95, 197-98, 203-04, 208-22.]

C. The Refusal Of ODE And The Democrat Amici To Even State When The Department’s Purported Statutory Authorization To Impose A Durational Funding Standard Became Effective Further Proves The Point: No Such Standard Was Authorized Or Intended.

Tellingly, neither ODE nor the Democrat Amici attempt to explain when the supposedly clear statutory authority for ODE to impose a durational funding standard became effective. Indeed, the Democrat Amici assert that the Court **doesn’t need to know**. [Democrat Amici Brief, at 16.] ODE asserts that history is irrelevant. [ODE Brief, at 39-40.]

But, the legislative history is important because, coupled with ODE’s long-standing historical practice, it further demonstrates that no durational funding standard was ever intended or authorized by the legislature.

- **If the references to “participation” in Section 3314.08(H)(2) and ten-hour rule in Section 3314.08(H)(3) truly establish a duration-based funding test, then ODE should have begun applying it by no later than 2005.**

No one disputes that the Ohio Community Schools Act (“OCSA”), as enacted in 1997, established a purely **enrollment-based** funding standard for **all** community schools. [See APP-23-27 (excerpts of H.B. 215).] That means ODE’s supposedly “clear” authority must have been established by a subsequent amendment. But, which one? Was it the **2003** Amendment that added the above-described “participation” and “instruction time” language to what is now Section 3314.08(H)(2)? [See APP-47 (HB 364).] Was it the **2005** Amendment that added the 10-hour rule to what is now Section 3314.08(H)(3)? [See APP-62 (HB 66).]

It must have been one of those two, since such amendments added the language upon which both ODE and the Democrat Amici base their argument on appeal. Yet, neither ODE nor the Democrat Amici will say. That is not surprising.

Assuming that ODE's argument regarding the import of such language is correct, then either answer would amount to an **admission** that the department failed **to fulfill its statutory obligation** for either 13 or 11 years.

- **ODE's long-standing course of conduct, and consistent statements made to the Auditor, further demonstrate that neither amendment provided for or authorized the department to impose an eschool-specific durational funding standard.**

In reality, neither amendment (nor any other amendment) to Section 3314.08 established or otherwise authorized ODE to impose a durational funding test. That is why ODE—for the first time in its Appellee's brief in this appeal—now tries to cover its tracks by claiming that it did not review durational data in the past only because it was too trusting, and because it treated enrollment data as a “proxy” for actual participation. [ODE Brief, at 47.] This argument is meritless.

The undisputed record before the Trial Court does not reflect mere imperfect execution by ODE. Rather, it demonstrates a long-standing and systematic practice by the department in which it expressly recognized and advised others as to the **enrollment-based** focus of the FTE funding inquiry. Duration of participation was **never part of the equation**. By way of summary:

- ODE specifically accounted for and sought to comply with 2003's HB 364, which added the pertinent language to Section 3314.08(H)(2), in entering the 2003 Funding Agreement with ECOT. [Tr. Vol. II 9-10.] Such agreement specifically provided for an enrollment-based funding methodology, premised on “presented” (or offered) learning opportunities. [Pl. Exh. 20.]
- ODE specifically incorporated this **enrollment-based** approach in preparing the FTE handbook it used as a purported “guideline” in reviewing other eschools, through 2015. [Tr. Vol. III 207-08.]
- ODE's historical FTE reviews of ECOT always focused on **enrollment**. At no point was durational information requested. [Tr. Vol. IV 209-12, 223-24, 232-34,

Vol. III 43-48; Vol. 1 144-47; Vol. IV 25-54.] Of course, that is simply consistent with the express language of R.C. 3314.08(K).

- ODE **repeatedly and consistently** advised the Auditor's office that the eschool FTE funding methodology is based on "offered" opportunities (i.e., enrollment)—not duration of participation. [Tr. Vol. IV 20-22, 24-28, 91.]
- Thus, the Auditor's office was surprised at ODE's drastic change of course in 2016. That surprise was reflected in a March 2016 letter from the Auditor's Office to ODE, in which the auditor's office expressed concern about ODE's drastic change from its prior, enrollment-based approach in conducting FTE Reviews. [Pla. Exh. 52.]

Against this backdrop, ODE's revisionist "proxy" assertion rings hollow. The department's long-standing conduct confirms that **enrollment** continued to serve as the basis for eschool FTE funding, even after the 2003 and 2005 amendments.

D. If Ambiguity Exists As To The Extent Of ODE's Authority, ECOT's Position Prevails—No Administrative Deference Is Due.

Finally, even if there is some doubt or ambiguity as to whether Section 3314.08 authorizes ODE to unilaterally impose a durational funding standard, ECOT prevails on its appeal. That is because questions as to an agency's authority, like the one presented here, implicate the doctrine of separation of powers.

In such circumstances, this Court has repeatedly held that, in construing the legislature's grant or delegation of power/authority to an agency, the "intention of the grant of power, as well as the extent of the grant, must be clear; **that in case of doubt that doubt is to be resolved, not in favor of the grant, but against it.**" *Burger Brewing Co. v. Thomas*, 42 Ohio St.2d 377, 383, 329 N.E.2d 693 (1975) (emphasis added); *D.A.B.E., Inc. v. Toledo-Lucas County. Bd. of Health*, 2002-Ohio-4172, 96 Ohio St. 3d, 250, 773 N.E. 2d 773, ¶ 40.

- **ODE Misapplies The Rule Of Deference To An Administrative Expansion.**

ODE does not dispute this rule, nor does it quibble with the result that necessarily attains where the extent of an agency's statutory authority is in doubt or ambiguous. Instead, ODE asserts—in passing—that such authorities are inapposite, and thus, deference is warranted to its position, because its decision to impose an eschool-specific durational funding standard is simply akin to an agency's adjudicatory “interpretation” of a technical term or industry-specific term of art. That argument is clearly misplaced.

In support of its position, ODE merely cites two decisions where an administrative agency, in conjunction with an adjudicatory proceeding, simply interpreted specific, technical terminology found in statutes the agency was clearly authorized to enforce. Thus, for example, in *Senco Brands, Inc. v. Ohio Dep't of Job & Family Services*, 10th Dist. Franklin No. 15AP-796, 2016-Ohio-4769, the court recognized that administrative deference was warranted to an agency's adjudicative interpretation of the term “successor-in-interest.” Similarly, in *Weiss v. Public Util. Comm'n*, 90 Ohio St. 3d 15, 17-18, 734 N.E.2d 775 (2000), the Court recognized that deference was appropriately given to the PUCO's statutory interpretation, in conjunction with an administrative hearing, that a utility's particular classification constituted “a reasonable basis for an electric utility to classify its customers.” *Id.* And, in *UBS Fin. Servs. v. Levin*, 119 Ohio St.3d 286, 2008-Ohio-3821, 892 N.E.2d 811—the lone “deference” decision cited by the Democrat Amici—the court found deference to be appropriate in the context of the tax commissioner's adjudicatory interpretation of the term “receipts.”

On top of that, this Court has further limited its holding in *Levin* to circumstances involving “**long-standing**” agency practice. Specifically, in *Int’l. Paper Co. v. Testa*, 2016-Ohio-7454, 150 Ohio St.3d 348, 81 N.E.3d 1225, 1230, ¶ 17 the Court recognized that deference was warranted in *Levin* because of the tax commissioner’s “longstanding administrative practice.” Based on that limitation, the Court refused to extend such deference to circumstances where, as in *Testa*, the agency action at issue was “entirely recent and relatively limited.” *Id.*

Here, even if the rule of deference were otherwise applicable (and it is not), the Court’s holding in *Int’l Paper* **precludes deference** to ODE’s recent “interpretation” that it is authorized to impose a durational funding standard. Rather, if anything, it is ODE’s “long-standing agency practice” of basing eschool funding on **enrollment** that is entitled to deference.

- **But, A Mere “Interpretation” Of A Statute Cannot Be Used To Expand An Agency’s Authority.**

Such authorities are plainly inapposite here, where ODE has sought to unilaterally impose a funding standard that impacts literally **hundreds of millions of dollars in statewide school funding**. The department has not—as it apparently suggests—merely interpreted a basic, technical industry term. Rather, the issue presented is clearly one of administrative **authority**, and the rule of strict construction applies. See, e.g., *League of United Latin American Citizens v. Kasich*, 10th Dist. Franklin App. No. 10-AP-639, 2012-Ohio-947, ¶¶ 39-56 (where statute expressly authorized BMV to “refuse” an application for registration on specified grounds, agency could not unilaterally expand its authority by seeking to revoke previous registrations

that were improvidently granted). Applied here, this rule leads to only one conclusion: ODE's attempt to expand its own authority must be rejected.

CONCLUSION

R.C. 3314.08 does not authorize ODE's unilateral attempt to impose a new durational funding standard on eschools—schools that cannot pick and choose the students they enroll; that cannot withdraw students except in limited, statutorily-specified instances; and that must make **all** of their resources available to **all** enrolled students, including those struggling with engagement/participation. The Court should rule in ECOT's favor.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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ADDENDUM

As Introduced

132nd General Assembly

Regular Session

2017-2018

S. B. No. 39

Senator Schiavoni

Cosponsors: Senators Thomas, Brown, Skindell, Yuko, O'Brien, Williams, Tavares

A BILL

To amend sections 3302.01, 3302.03, 3302.41, 1
3314.03, 3314.032, 3314.08, 3314.23, 3314.27, 2
and 3314.271 and to enact sections 3302.038, 3
3314.088, 3314.241, 3314.242, and 3314.52 of the 4
Revised Code regarding community school operator 5
contracts, the operation of Internet- and 6
computer-based community schools, and 7
performance metrics for blended learning 8
schools. 9

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

Section 1. That sections 3302.01, 3302.03, 3302.41, 10
3314.03, 3314.032, 3314.08, 3314.23, 3314.27, and 3314.271 be 11
amended and sections 3302.038, 3314.088, 3314.241, 3314.242, and 12
3314.52 of the Revised Code be enacted to read as follows: 13

Sec. 3302.01. As used in this chapter: 14

(A) "Performance index score" means the average of the 15
totals derived from calculations, for each subject area, of the 16
weighted proportion of untested students and students scoring at 17
each level of skill described in division (A) (2) of section 18

3301.0710 of the Revised Code on the state achievement 19
assessments, as follows: 20

(1) For the assessments prescribed by division (A) (1) of 21
section 3301.0710 of the Revised Code, the average for each of 22
the subject areas of English language arts, mathematics, 23
science, and social studies. 24

(2) For the assessments prescribed by division (B) (1) of 25
section 3301.0710 and division (B) (2) of section 3301.0712 of 26
the Revised Code, the average for each of the subject areas of 27
English language arts and mathematics. 28

The department of education shall assign weights such that 29
students who do not take an assessment receive a weight of zero 30
and students who take an assessment receive progressively larger 31
weights dependent upon the level of skill attained on the 32
assessment. The department shall assign additional weights to 33
students who have been permitted to pass over a subject in 34
accordance with a student acceleration policy adopted under 35
section 3324.10 of the Revised Code. If such a student attains 36
the proficient score prescribed under division (A) (2) (c) of 37
section 3301.0710 of the Revised Code or higher on an 38
assessment, the department shall assign the student the weight 39
prescribed for the next higher scoring level. If such a student 40
attains the advanced score, prescribed under division (A) (2) (a) 41
of section 3301.0710 of the Revised Code, on an assessment, the 42
department shall assign to the student an additional 43
proportional weight, as approved by the state board. For each 44
school year that such a student's score is included in the 45
performance index score and the student attains the proficient 46
score on an assessment, that additional weight shall be assigned 47
to the student on a subject-by-subject basis. 48

Students shall be included in the "performance index
score" in accordance with division (K) (2) of section 3302.03 of
the Revised Code.

(B) "Subgroup" means a subset of the entire student
population of the state, a school district, or a school building
and includes each of the following:

(1) Major racial and ethnic groups;

(2) Students with disabilities;

(3) Economically disadvantaged students;

(4) Limited English proficient students;

(5) Students identified as gifted in superior cognitive
ability and specific academic ability fields under Chapter 3324.
of the Revised Code. For students who are gifted in specific
academic ability fields, the department shall use data for those
students with specific academic ability in math and reading. If
any other academic field is assessed, the department shall also
include data for students with specific academic ability in that
field.

(6) Students in the lowest quintile for achievement
statewide, as determined by a method prescribed by the state
board of education.

(C) "No Child Left Behind Act of 2001" includes the
statutes codified at 20 U.S.C. 6301 et seq. and any amendments,
waivers, or both thereto, rules and regulations promulgated
pursuant to those statutes, guidance documents, and any other
policy directives regarding implementation of that act issued by
the United States department of education.

(D) "Adequate yearly progress" means a measure of annual

academic performance as calculated in accordance with the "No	77
Child Left Behind Act of 2001."	78
(E) "Supplemental educational services" means additional	79
academic assistance, such as tutoring, remediation, or other	80
educational enrichment activities, that is conducted outside of	81
the regular school day by a provider approved by the department	82
in accordance with the "No Child Left Behind Act of 2001."	83
(F) "Value-added progress dimension" means a measure of	84
academic gain for a student or group of students over a specific	85
period of time that is calculated by applying a statistical	86
methodology to individual student achievement data derived from	87
the achievement assessments prescribed by section 3301.0710 of	88
the Revised Code. The "value-added progress dimension" shall be	89
developed and implemented in accordance with section 3302.021 of	90
the Revised Code.	91
(G) (1) "Four-year adjusted cohort graduation rate" means	92
the number of students who graduate in four years or less with a	93
regular high school diploma divided by the number of students	94
who form the adjusted cohort for the graduating class.	95
(2) "Five-year adjusted cohort graduation rate" means the	96
number of students who graduate in five years with a regular	97
high school diploma divided by the number of students who form	98
the adjusted cohort for the four-year graduation rate.	99
(H) "State institution of higher education" has the same	100
meaning as in section 3345.011 of the Revised Code.	101
(I) "Annual measurable objectives" means a measure of	102
student progress determined in accordance with an agreement	103
between the department of education and the United States	104
department of education.	105

(J) "Community school" means a community school 106
established under Chapter 3314. of the Revised Code. 107

(K) "Internet- or computer-based community school" has the 108
same meaning as in section 3314.02 of the Revised Code. 109

(L) "STEM school" means a science, technology, 110
engineering, and mathematics school established under Chapter 111
3326. of the Revised Code. 112

~~(L)~~ (M) "Entitled to attend school in the district" means 113
entitled to attend school in a school district under section 114
3313.64 or 3313.65 of the Revised Code. 115

Sec. 3302.03. Annually, not later than the fifteenth day 116
of September or the preceding Friday when that day falls on a 117
Saturday or Sunday, the department of education shall assign a 118
letter grade for overall academic performance and for each 119
separate performance measure for each school district, and each 120
school building in a district, in accordance with this section. 121
The state board shall adopt rules pursuant to Chapter 119. of 122
the Revised Code to establish performance criteria for each 123
letter grade and prescribe a method by which the department 124
assigns each letter grade. For a school building to which any of 125
the performance measures do not apply, due to grade levels 126
served by the building, the state board shall designate the 127
performance measures that are applicable to the building and 128
that must be calculated separately and used to calculate the 129
building's overall grade. The department shall issue annual 130
report cards reflecting the performance of each school district, 131
each building within each district, and for the state as a whole 132
using the performance measures and letter grade system described 133
in this section. The department shall include on the report card 134
for each district and each building within each district the 135

most recent two-year trend data in student achievement for each 136
subject and each grade. 137

(A) (1) For the 2012-2013 school year, the department shall 138
issue grades as described in division (E) of this section for 139
each of the following performance measures: 140

(a) Annual measurable objectives; 141

(b) Performance index score for a school district or 142
building. Grades shall be awarded as a percentage of the total 143
possible points on the performance index system as adopted by 144
the state board. In adopting benchmarks for assigning letter 145
grades under division (A) (1) (b) of this section, the state board 146
of education shall designate ninety per cent or higher for an 147
"A," at least seventy per cent but not more than eighty per cent 148
for a "C," and less than fifty per cent for an "F." 149

(c) The extent to which the school district or building 150
meets each of the applicable performance indicators established 151
by the state board under section 3302.02 of the Revised Code and 152
the percentage of applicable performance indicators that have 153
been achieved. In adopting benchmarks for assigning letter 154
grades under division (A) (1) (c) of this section, the state board 155
shall designate ninety per cent or higher for an "A." 156

(d) The four- and five-year adjusted cohort graduation 157
rates. 158

In adopting benchmarks for assigning letter grades under 159
division (A) (1) (d), (B) (1) (d), or (C) (1) (d) of this section, the 160
department shall designate a four-year adjusted cohort 161
graduation rate of ninety-three per cent or higher for an "A" 162
and a five-year cohort graduation rate of ninety-five per cent 163
or higher for an "A." 164

(e) The overall score under the value-added progress 165
dimension of a school district or building, for which the 166
department shall use up to three years of value-added data as 167
available. The letter grade assigned for this growth measure 168
shall be as follows: 169

(i) A score that is at least two standard errors of 170
measure above the mean score shall be designated as an "A." 171

(ii) A score that is at least one standard error of 172
measure but less than two standard errors of measure above the 173
mean score shall be designated as a "B." 174

(iii) A score that is less than one standard error of 175
measure above the mean score but greater than or equal to one 176
standard error of measure below the mean score shall be 177
designated as a "C." 178

(iv) A score that is not greater than one standard error 179
of measure below the mean score but is greater than or equal to 180
two standard errors of measure below the mean score shall be 181
designated as a "D." 182

(v) A score that is not greater than two standard errors 183
of measure below the mean score shall be designated as an "F." 184

Whenever the value-added progress dimension is used as a 185
graded performance measure, whether as an overall measure or as 186
a measure of separate subgroups, the grades for the measure 187
shall be calculated in the same manner as prescribed in division 188
(A) (1) (e) of this section. 189

(f) The value-added progress dimension score for a school 190
district or building disaggregated for each of the following 191
subgroups: students identified as gifted, students with 192
disabilities, and students whose performance places them in the 193

lowest quintile for achievement on a statewide basis. Each 194
subgroup shall be a separate graded measure. 195

(2) Not later than April 30, 2013, the state board of 196
education shall adopt a resolution describing the performance 197
measures, benchmarks, and grading system for the 2012-2013 198
school year and, not later than June 30, 2013, shall adopt rules 199
in accordance with Chapter 119. of the Revised Code that 200
prescribe the methods by which the performance measures under 201
division (A)(1) of this section shall be assessed and assigned a 202
letter grade, including performance benchmarks for each letter 203
grade. 204

At least forty-five days prior to the state board's 205
adoption of rules to prescribe the methods by which the 206
performance measures under division (A)(1) of this section shall 207
be assessed and assigned a letter grade, the department shall 208
conduct a public presentation before the standing committees of 209
the house of representatives and the senate that consider 210
education legislation describing such methods, including 211
performance benchmarks. 212

(3) There shall not be an overall letter grade for a 213
school district or building for the 2012-2013 school year. 214

(B)(1) For the 2013-2014 ~~and 2014-2015 through 2016-2017~~ 215
school years, the department shall issue grades as described in 216
division (E) of this section for each of the following 217
performance measures: 218

(a) Annual measurable objectives; 219

(b) Performance index score for a school district or 220
building. Grades shall be awarded as a percentage of the total 221
possible points on the performance index system as created by 222

the department. In adopting benchmarks for assigning letter 223
grades under division (B) (1) (b) of this section, the state board 224
shall designate ninety per cent or higher for an "A," at least 225
seventy per cent but not more than eighty per cent for a "C," 226
and less than fifty per cent for an "F." 227

(c) The extent to which the school district or building 228
meets each of the applicable performance indicators established 229
by the state board under section 3302.03 of the Revised Code and 230
the percentage of applicable performance indicators that have 231
been achieved. In adopting benchmarks for assigning letter 232
grades under division (B) (1) (c) of this section, the state board 233
shall designate ninety per cent or higher for an "A." 234

(d) The four- and five-year adjusted cohort graduation 235
rates; 236

(e) The overall score under the value-added progress 237
dimension of a school district or building, for which the 238
department shall use up to three years of value-added data as 239
available. 240

(f) The value-added progress dimension score for a school 241
district or building disaggregated for each of the following 242
subgroups: students identified as gifted in superior cognitive 243
ability and specific academic ability fields under Chapter 3324. 244
of the Revised Code, students with disabilities, and students 245
whose performance places them in the lowest quintile for 246
achievement on a statewide basis. Each subgroup shall be a 247
separate graded measure. 248

(g) Whether a school district or building is making 249
progress in improving literacy in grades kindergarten through 250
three, as determined using a method prescribed by the state 251

board. The state board shall adopt rules to prescribe benchmarks 252
and standards for assigning grades to districts and buildings 253
for purposes of division (B) (1) (g) of this section. In adopting 254
benchmarks for assigning letter grades under divisions (B) (1) (g) 255
and (C) (1) (g) of this section, the state board shall determine 256
progress made based on the reduction in the total percentage of 257
students scoring below grade level, or below proficient, 258
compared from year to year on the reading and writing diagnostic 259
assessments administered under section 3301.0715 of the Revised 260
Code and the third grade English language arts assessment under 261
section 3301.0710 of the Revised Code, as applicable. The state 262
board shall designate for a "C" grade a value that is not lower 263
than the statewide average value for this measure. No grade 264
shall be issued under divisions (B) (1) (g) and (C) (1) (g) of this 265
section for a district or building in which less than five per 266
cent of students have scored below grade level on the diagnostic 267
assessment administered to students in kindergarten under 268
division (B) (1) of section 3313.608 of the Revised Code. 269

(h) For a high mobility school district or building, an 270
additional value-added progress dimension score. For this 271
measure, the department shall use value-added data from the most 272
recent school year available and shall use assessment scores for 273
only those students to whom the district or building has 274
administered the assessments prescribed by section 3301.0710 of 275
the Revised Code for each of the two most recent consecutive 276
school years. 277

As used in this division, "high mobility school district 278
or building" means a school district or building where at least 279
twenty-five per cent of its total enrollment is made up of 280
students who have attended that school district or building for 281
less than one year. 282

(2) In addition to the graded measures in division (B) (1) 283
of this section, the department shall include on a school 284
district's or building's report card all of the following 285
without an assigned letter grade: 286

(a) The percentage of students enrolled in a district or 287
building participating in advanced placement classes and the 288
percentage of those students who received a score of three or 289
better on advanced placement examinations; 290

(b) The number of a district's or building's students who 291
have earned at least three college credits through dual 292
enrollment or advanced standing programs, such as the post- 293
secondary enrollment options program under Chapter 3365. of the 294
Revised Code and state-approved career-technical courses offered 295
through dual enrollment or statewide articulation, that appear 296
on a student's transcript or other official document, either of 297
which is issued by the institution of higher education from 298
which the student earned the college credit. The credits earned 299
that are reported under divisions (B) (2) (b) and (C) (2) (c) of 300
this section shall not include any that are remedial or 301
developmental and shall include those that count toward the 302
curriculum requirements established for completion of a degree. 303

(c) The percentage of students enrolled in a district or 304
building who have taken a national standardized test used for 305
college admission determinations and the percentage of those 306
students who are determined to be remediation-free in accordance 307
with standards adopted under division (F) of section 3345.061 of 308
the Revised Code; 309

(d) The percentage of the district's or the building's 310
students who receive industry-recognized credentials. The state 311
board shall adopt criteria for acceptable industry-recognized 312

credentials. 313

(e) The percentage of students enrolled in a district or 314
building who are participating in an international baccalaureate 315
program and the percentage of those students who receive a score 316
of four or better on the international baccalaureate 317
examinations. 318

(f) The percentage of the district's or building's 319
students who receive an honors diploma under division (B) of 320
section 3313.61 of the Revised Code. 321

(3) Not later than December 31, 2013, the state board 322
shall adopt rules in accordance with Chapter 119. of the Revised 323
Code that prescribe the methods by which the performance 324
measures under divisions (B) (1) (f) and (B) (1) (g) of this section 325
will be assessed and assigned a letter grade, including 326
performance benchmarks for each grade. 327

At least forty-five days prior to the state board's 328
adoption of rules to prescribe the methods by which the 329
performance measures under division (B) (1) of this section shall 330
be assessed and assigned a letter grade, the department shall 331
conduct a public presentation before the standing committees of 332
the house of representatives and the senate that consider 333
education legislation describing such methods, including 334
performance benchmarks. 335

(4) There shall not be an overall letter grade for a 336
school district or building for the 2013-2014, 2014-2015, 2015- 337
2016, and 2016-2017 school years. 338

(C) (1) For the ~~2014-2015-2017-2018~~ school year and each 339
school year thereafter, the department shall issue grades as 340
described in division (E) of this section for each of the 341

performance measures prescribed in division (C) (1) of this 342
section. The graded measures are as follows: 343

(a) Annual measurable objectives; 344

(b) Performance index score for a school district or 345
building. Grades shall be awarded as a percentage of the total 346
possible points on the performance index system as created by 347
the department. In adopting benchmarks for assigning letter 348
grades under division (C) (1) (b) of this section, the state board 349
shall designate ninety per cent or higher for an "A," at least 350
seventy per cent but not more than eighty per cent for a "C," 351
and less than fifty per cent for an "F." 352

(c) The extent to which the school district or building 353
meets each of the applicable performance indicators established 354
by the state board under section 3302.03 of the Revised Code and 355
the percentage of applicable performance indicators that have 356
been achieved. In adopting benchmarks for assigning letter 357
grades under division (C) (1) (c) of this section, the state board 358
shall designate ninety per cent or higher for an "A." 359

(d) The four- and five-year adjusted cohort graduation 360
rates; 361

(e) The overall score under the value-added progress 362
dimension, or another measure of student academic progress if 363
adopted by the state board, of a school district or building, 364
for which the department shall use up to three years of value- 365
added data as available. 366

In adopting benchmarks for assigning letter grades for 367
overall score on value-added progress dimension under division 368
(C) (1) (e) of this section, the state board shall prohibit the 369
assigning of a grade of "A" for that measure unless the 370

district's or building's grade assigned for value-added progress 371
dimension for all subgroups under division (C) (1) (f) of this 372
section is a "B" or higher. 373

For the metric prescribed by division (C) (1) (e) of this 374
section, the state board may adopt a student academic progress 375
measure to be used instead of the value-added progress 376
dimension. If the state board adopts such a measure, it also 377
shall prescribe a method for assigning letter grades for the new 378
measure that is comparable to the method prescribed in division 379
(A) (1) (e) of this section. 380

(f) The value-added progress dimension score of a school 381
district or building disaggregated for each of the following 382
subgroups: students identified as gifted in superior cognitive 383
ability and specific academic ability fields under Chapter 3324. 384
of the Revised Code, students with disabilities, and students 385
whose performance places them in the lowest quintile for 386
achievement on a statewide basis, as determined by a method 387
prescribed by the state board. Each subgroup shall be a separate 388
graded measure. 389

The state board may adopt student academic progress 390
measures to be used instead of the value-added progress 391
dimension. If the state board adopts such measures, it also 392
shall prescribe a method for assigning letter grades for the new 393
measures that is comparable to the method prescribed in division 394
(A) (1) (e) of this section. 395

(g) Whether a school district or building is making 396
progress in improving literacy in grades kindergarten through 397
three, as determined using a method prescribed by the state 398
board. The state board shall adopt rules to prescribe benchmarks 399
and standards for assigning grades to a district or building for 400

purposes of division (C) (1) (g) of this section. The state board 401
shall designate for a "C" grade a value that is not lower than 402
the statewide average value for this measure. No grade shall be 403
issued under division (C) (1) (g) of this section for a district 404
or building in which less than five per cent of students have 405
scored below grade level on the kindergarten diagnostic 406
assessment under division (B) (1) of section 3313.608 of the 407
Revised Code. 408

(h) For a high mobility school district or building, an 409
additional value-added progress dimension score. For this 410
measure, the department shall use value-added data from the most 411
recent school year available and shall use assessment scores for 412
only those students to whom the district or building has 413
administered the assessments prescribed by section 3301.0710 of 414
the Revised Code for each of the two most recent consecutive 415
school years. 416

As used in this division, "high mobility school district 417
or building" means a school district or building where at least 418
twenty-five per cent of its total enrollment is made up of 419
students who have attended that school district or building for 420
less than one year. 421

(2) In addition to the graded measures in division (C) (1) 422
of this section, the department shall include on a school 423
district's or building's report card all of the following 424
without an assigned letter grade: 425

(a) The percentage of students enrolled in a district or 426
building who have taken a national standardized test used for 427
college admission determinations and the percentage of those 428
students who are determined to be remediation-free in accordance 429
with the standards adopted under division (F) of section 430

3345.061 of the Revised Code; 431

(b) The percentage of students enrolled in a district or 432
building participating in advanced placement classes and the 433
percentage of those students who received a score of three or 434
better on advanced placement examinations; 435

(c) The percentage of a district's or building's students 436
who have earned at least three college credits through advanced 437
standing programs, such as the college credit plus program under 438
Chapter 3365. of the Revised Code and state-approved career- 439
technical courses offered through dual enrollment or statewide 440
articulation, that appear on a student's college transcript 441
issued by the institution of higher education from which the 442
student earned the college credit. The credits earned that are 443
reported under divisions (B) (2) (b) and (C) (2) (c) of this section 444
shall not include any that are remedial or developmental and 445
shall include those that count toward the curriculum 446
requirements established for completion of a degree. 447

(d) The percentage of the district's or building's 448
students who receive an honor's diploma under division (B) of 449
section 3313.61 of the Revised Code; 450

(e) The percentage of the district's or building's 451
students who receive industry-recognized credentials; 452

(f) The percentage of students enrolled in a district or 453
building who are participating in an international baccalaureate 454
program and the percentage of those students who receive a score 455
of four or better on the international baccalaureate 456
examinations; 457

(g) The results of the college and career-ready 458
assessments administered under division (B) (1) of section 459

3301.0712 of the Revised Code. 460

(3) The state board shall adopt rules pursuant to Chapter 461
119. of the Revised Code that establish a method to assign an 462
overall grade for a school district or school building for the 463
2017-2018 school year and each school year thereafter. The rules 464
shall group the performance measures in divisions (C)(1) and (2) 465
of this section into the following components: 466

(a) Gap closing, which shall include the performance 467
measure in division (C)(1)(a) of this section; 468

(b) Achievement, which shall include the performance 469
measures in divisions (C)(1)(b) and (c) of this section; 470

(c) Progress, which shall include the performance measures 471
in divisions (C)(1)(e) and (f) of this section; 472

(d) Graduation, which shall include the performance 473
measure in division (C)(1)(d) of this section; 474

(e) Kindergarten through third-grade literacy, which shall 475
include the performance measure in division (C)(1)(g) of this 476
section; 477

(f) Prepared for success, which shall include the 478
performance measures in divisions (C)(2)(a), (b), (c), (d), (e), 479
and (f) of this section. The state board shall develop a method 480
to determine a grade for the component in division (C)(3)(f) of 481
this section using the performance measures in divisions (C)(2) 482
(a), (b), (c), (d), (e), and (f) of this section. When 483
available, the state board may incorporate the performance 484
measure under division (C)(2)(g) of this section into the 485
component under division (C)(3)(f) of this section. When 486
determining the overall grade for the prepared for success 487
component prescribed by division (C)(3)(f) of this section, no 488

individual student shall be counted in more than one performance 489
measure. However, if a student qualifies for more than one 490
performance measure in the component, the state board may, in 491
its method to determine a grade for the component, specify an 492
additional weight for such a student that is not greater than or 493
equal to 1.0. In determining the overall score under division 494
(C) (3) (f) of this section, the state board shall ensure that the 495
pool of students included in the performance measures aggregated 496
under that division are all of the students included in the 497
four- and five-year adjusted graduation cohort. 498

In the rules adopted under division (C) (3) of this 499
section, the state board shall adopt a method for determining a 500
grade for each component in divisions (C) (3) (a) to (f) of this 501
section. The state board also shall establish a method to assign 502
an overall grade of "A," "B," "C," "D," or "F" using the grades 503
assigned for each component. The method the state board adopts 504
for assigning an overall grade shall give equal weight to the 505
components in divisions (C) (3) (b) and (c) of this section. 506

At least forty-five days prior to the state board's 507
adoption of rules to prescribe the methods for calculating the 508
overall grade for the report card, as required by this division, 509
the department shall conduct a public presentation before the 510
standing committees of the house of representatives and the 511
senate that consider education legislation describing the format 512
for the report card, weights that will be assigned to the 513
components of the overall grade, and the method for calculating 514
the overall grade. 515

(D) On or after ~~than~~ July 1, 2015, the state board may 516
develop a measure of student academic progress for high school 517
students using only data from assessments in English language 518

arts and mathematics. If the state board develops this measure, 519
each school district and applicable school building shall be 520
assigned a separate letter grade for ~~if~~it not sooner than the 521
2017-2018 school year. The district's or building's grade for 522
that measure shall not be included in determining the district's 523
or building's overall letter grade. 524

(E) The letter grades assigned to a school district or 525
building under this section shall be as follows: 526

(1) "A" for a district or school making excellent 527
progress; 528

(2) "B" for a district or school making above average 529
progress; 530

(3) "C" for a district or school making average progress; 531

(4) "D" for a district or school making below average 532
progress; 533

(5) "F" for a district or school failing to meet minimum 534
progress. 535

(F) When reporting data on student achievement and 536
progress, the department shall disaggregate that data according 537
to the following categories: 538

(1) Performance of students by grade-level; 539

(2) Performance of students by race and ethnic group; 540

(3) Performance of students by gender; 541

(4) Performance of students grouped by those who have been 542
enrolled in a district or school for three or more years; 543

(5) Performance of students grouped by those who have been 544
enrolled in a district or school for more than one year and less 545

than three years;	546
(6) Performance of students grouped by those who have been	547
enrolled in a district or school for one year or less;	548
(7) Performance of students grouped by those who are	549
economically disadvantaged;	550
(8) Performance of students grouped by those who are	551
enrolled in a conversion community school established under	552
Chapter 3314. of the Revised Code;	553
(9) Performance of students grouped by those who are	554
classified as limited English proficient;	555
(10) Performance of students grouped by those who have	556
disabilities;	557
(11) Performance of students grouped by those who are	558
classified as migrants;	559
(12) Performance of students grouped by those who are	560
identified as gifted in superior cognitive ability and the	561
specific academic ability fields of reading and math pursuant to	562
Chapter 3324. of the Revised Code. In disaggregating specific	563
academic ability fields for gifted students, the department	564
shall use data for those students with specific academic ability	565
in math and reading. If any other academic field is assessed,	566
the department shall also include data for students with	567
specific academic ability in that field as well.	568
(13) Performance of students grouped by those who perform	569
in the lowest quintile for achievement on a statewide basis, as	570
determined by a method prescribed by the state board.	571
The department may disaggregate data on student	572
performance according to other categories that the department	573

determines are appropriate. To the extent possible, the 574
department shall disaggregate data on student performance 575
according to any combinations of two or more of the categories 576
listed in divisions (F) (1) to (13) of this section that it deems 577
relevant. 578

In reporting data pursuant to division (F) of this 579
section, the department shall not include in the report cards 580
any data statistical in nature that is statistically unreliable 581
or that could result in the identification of individual 582
students. For this purpose, the department shall not report 583
student performance data for any group identified in division 584
(F) of this section that contains less than ten students. If the 585
department does not report student performance data for a group 586
because it contains less than ten students, the department shall 587
indicate on the report card that is why data was not reported. 588

(G) The department may include with the report cards any 589
additional education and fiscal performance data it deems 590
valuable. 591

(H) The department shall include on each report card a 592
list of additional information collected by the department that 593
is available regarding the district or building for which the 594
report card is issued. ~~When available, such~~ Such additional 595
information shall include student mobility data disaggregated by 596
race and socioeconomic status, for each district and school 597
including each internet- and computer-based community school not 598
sponsored by a school district. When available, such additional 599
information also shall include college enrollment data, and the 600
reports prepared under section 3302.031 of the Revised Code. 601

The department shall maintain a site on the world wide 602
web. The report card shall include the address of the site and 603

shall specify that such additional information is available to 604
the public at that site. The department shall also provide a 605
copy of each item on the list to the superintendent of each 606
school district. The district superintendent shall provide a 607
copy of any item on the list to anyone who requests it. 608

(I) (1) (a) Except as provided in division (I) (1) (b) of this 609
section, for any district that sponsors a conversion community 610
school under Chapter 3314. of the Revised Code, the department 611
shall combine data regarding the academic performance of 612
students enrolled in the community school with comparable data 613
from the schools of the district for the purpose of determining 614
the performance of the district as a whole on the report card 615
issued for the district under this section or section 3302.033 616
of the Revised Code. 617

(b) The department shall not combine data from any 618
conversion community school that a district sponsors if a 619
majority of the students enrolled in the conversion community 620
school are enrolled in a dropout prevention and recovery program 621
that is operated by the school, as described in division (A) (4) 622
(a) of section 3314.35 of the Revised Code. The department shall 623
include as an addendum to the district's report card the ratings 624
and performance measures that are required under section 625
3314.017 of the Revised Code for any community school to which 626
division (I) (1) (b) of this section applies. This addendum shall 627
include, at a minimum, the data specified in divisions (C) (1) 628
(a), (C) (2), and (C) (3) of section 3314.017 of the Revised Code. 629

(2) Any district that leases a building to a community 630
school located in the district or that enters into an agreement 631
with a community school located in the district whereby the 632
district and the school endorse each other's programs may elect 633

to have data regarding the academic performance of students 634
enrolled in the community school combined with comparable data 635
from the schools of the district for the purpose of determining 636
the performance of the district as a whole on the district 637
report card. Any district that so elects shall annually file a 638
copy of the lease or agreement with the department. 639

(3) Any municipal school district, as defined in section 640
3311.71 of the Revised Code, that sponsors a community school 641
located within the district's territory, or that enters into an 642
agreement with a community school located within the district's 643
territory whereby the district and the community school endorse 644
each other's programs, may exercise either or both of the 645
following elections: 646

(a) To have data regarding the academic performance of 647
students enrolled in that community school combined with 648
comparable data from the schools of the district for the purpose 649
of determining the performance of the district as a whole on the 650
district's report card; 651

(b) To have the number of students attending that 652
community school noted separately on the district's report card. 653

The election authorized under division (I) (3) (a) of this 654
section is subject to approval by the governing authority of the 655
community school. 656

Any municipal school district that exercises an election 657
to combine or include data under division (I) (3) of this 658
section, by the first day of October of each year, shall file 659
with the department documentation indicating eligibility for 660
that election, as required by the department. 661

(J) The department shall include on each report card the 662

percentage of teachers in the district or building who are 663
highly qualified, as defined by the No Child Left Behind Act of 664
2001, and a comparison of that percentage with the percentages 665
of such teachers in similar districts and buildings. 666

(K) (1) In calculating English language arts, mathematics, 667
social studies, or science assessment passage rates used to 668
determine school district or building performance under this 669
section, the department shall include all students taking an 670
assessment with accommodation or to whom an alternate assessment 671
is administered pursuant to division (C) (1) or (3) of section 672
3301.0711 of the Revised Code. 673

(2) In calculating performance index scores, rates of 674
achievement on the performance indicators established by the 675
state board under section 3302.02 of the Revised Code, and 676
annual measurable objectives for determining adequate yearly 677
progress for school districts and buildings under this section, 678
the department shall do all of the following: 679

(a) Include for each district or building only those 680
students who are included in the ADM certified for the first 681
full school week of October and are continuously enrolled in the 682
district or building through the time of the spring 683
administration of any assessment prescribed by division (A) (1) 684
or (B) (1) of section 3301.0710 or division (B) of section 685
3301.0712 of the Revised Code that is administered to the 686
student's grade level; 687

(b) Include cumulative totals from both the fall and 688
spring administrations of the third grade English language arts 689
achievement assessment; 690

(c) Except as required by the No Child Left Behind Act of 691

2001, exclude for each district or building any limited English 692
proficient student who has been enrolled in United States 693
schools for less than one full school year. 694

(L) Beginning with the 2015-2016 school year and at least 695
once every three years thereafter, the state board of education 696
shall review and may adjust the benchmarks for assigning letter 697
grades to the performance measures and components prescribed 698
under divisions (C) (3) and (D) of this section. 699

Sec. 3302.038. For purposes of calculating grades on the 700
state report cards issued under section 3302.03 of the Revised 701
Code on and after the effective date of this section, in the 702
case of a student who is enrolled in an internet- or computer- 703
based community school not sponsored by a school district who 704
has participated in learning opportunities of the school for 705
more than ninety days during the school year for which the 706
report card is issued, but who during that school year transfers 707
to the school district in which the student is entitled to 708
attend school, the department of education shall attribute the 709
results of any assessments under section 3301.0710 or 3301.0712 710
of the Revised Code taken by that student to the community 711
school and not to the school district. 712

Sec. 3302.41. As used in this section, "blended learning" 713
has the same meaning as in section 3301.079 of the Revised Code. 714

(A) Any local, city, exempted village, or joint vocational 715
school district, community school established under Chapter 716
3314. of the Revised Code, STEM school established under Chapter 717
3326. of the Revised Code, college-preparatory boarding school 718
established under Chapter 3328. of the Revised Code, or 719
chartered nonpublic school may operate all or part of a school 720
using a blended learning model. If a school is operated using a 721

blended learning model or is to cease operating using a blended 722
learning model, the superintendent of the school or district or 723
director of the school shall notify the department of education 724
of that fact not later than the first day of July of the school 725
year for which the change is effective. If any school district 726
school, community school, or STEM school is already operated 727
using a blended learning model ~~on the effective date of this~~ 728
~~section September 24, 2012,~~ the superintendent of the school or 729
district may notify the department ~~within ninety days after the~~ 730
~~effective date of this section by December 23, 2012,~~ of that 731
fact and request that the school be classified as a blended 732
learning school. 733

(B) The state board of education shall revise any 734
operating standards for school districts and chartered nonpublic 735
schools adopted under section 3301.07 of the Revised Code to 736
include standards for the operation of blended learning under 737
this section. The blended learning operation standards shall 738
provide for all of the following: 739

(1) Student-to-teacher ratios whereby no school or 740
classroom is required to have more than one teacher for every 741
one hundred twenty-five students in blended learning classrooms; 742

(2) The extent to which the school is or is not obligated 743
to provide students with access to digital learning tools; 744

(3) The ability of all students, at any grade level, to 745
earn credits or advance grade levels upon demonstrating mastery 746
of knowledge or skills through competency-based learning models. 747
Credits or grade level advancement shall not be based on a 748
minimum number of days or hours in a classroom. 749

(4) An exemption from minimum school year or school day 750

requirements in sections 3313.48 and 3313.481 of the Revised 751
Code; 752

(5) Adequate provisions for: the licensing of teachers, 753
administrators, and other professional personnel and their 754
assignment according to training and qualifications; efficient 755
and effective instructional materials and equipment, including 756
library facilities; the proper organization, administration, and 757
supervision of each school, including regulations for preparing 758
all necessary records and reports and the preparation of a 759
statement of policies and objectives for each school; buildings, 760
grounds, and health and sanitary facilities and services; 761
admission of pupils, and such requirements for their promotion 762
from grade to grade as will ensure that they are capable and 763
prepared for the level of study to which they are certified; 764
requirements for graduation; and such other factors as the board 765
finds necessary. 766

(C) An internet- or computer-based community school, as 767
defined in section 3314.02 of the Revised Code, is not a blended 768
learning school authorized under this section. Nor does this 769
section affect any provisions for the operation of and payments 770
to an internet- or computer-based community school prescribed in 771
Chapter 3314. of the Revised Code. 772

(D) Not later than ninety days after the effective date of 773
this amendment, the department shall develop a metric for 774
measuring student performance in schools that operate using the 775
blended learning model. 776

Sec. 3314.03. A copy of every contract entered into under 777
this section shall be filed with the superintendent of public 778
instruction. The department of education shall make available on 779
its web site a copy of every approved, executed contract filed 780

with the superintendent under this section. 781

(A) Each contract entered into between a sponsor and the 782
governing authority of a community school shall specify the 783
following: 784

(1) That the school shall be established as either of the 785
following: 786

(a) A nonprofit corporation established under Chapter 787
1702. of the Revised Code, if established prior to April 8, 788
2003; 789

(b) A public benefit corporation established under Chapter 790
1702. of the Revised Code, if established after April 8, 2003. 791

(2) The education program of the school, including the 792
school's mission, the characteristics of the students the school 793
is expected to attract, the ages and grades of students, and the 794
focus of the curriculum; 795

(3) The academic goals to be achieved and the method of 796
measurement that will be used to determine progress toward those 797
goals, which shall include the statewide achievement 798
assessments; 799

(4) Performance standards, including but not limited to 800
all applicable report card measures set forth in section 3302.03 801
or 3314.017 of the Revised Code, by which the success of the 802
school will be evaluated by the sponsor; 803

(5) The admission standards of section 3314.06 of the 804
Revised Code and, if applicable, section 3314.061 of the Revised 805
Code; 806

(6) (a) Dismissal procedures; 807

(b) A requirement that the governing authority adopt an attendance policy that includes a procedure for automatically withdrawing a student from the school if the student without a legitimate excuse fails to participate in one hundred five consecutive hours of the learning opportunities ~~offered~~ provided to the student, unless section 3314.088 of the Revised Code applies to the student.

(7) The ways by which the school will achieve racial and ethnic balance reflective of the community it serves;

(8) Requirements for financial audits by the auditor of state. The contract shall require financial records of the school to be maintained in the same manner as are financial records of school districts, pursuant to rules of the auditor of state. Audits shall be conducted in accordance with section 117.10 of the Revised Code.

(9) An addendum to the contract outlining the facilities to be used that contains at least the following information:

(a) A detailed description of each facility used for instructional purposes;

(b) The annual costs associated with leasing each facility that are paid by or on behalf of the school;

(c) The annual mortgage principal and interest payments that are paid by the school;

(d) The name of the lender or landlord, identified as such, and the lender's or landlord's relationship to the operator, if any.

(10) Qualifications of teachers, including a requirement that the school's classroom teachers be licensed in accordance

with sections 3319.22 to 3319.31 of the Revised Code, except 836
that a community school may engage noncertificated persons to 837
teach up to twelve hours per week pursuant to section 3319.301 838
of the Revised Code. 839

(11) That the school will comply with the following 840
requirements: 841

(a) The school will provide learning opportunities to a 842
minimum of twenty-five students for a minimum of nine hundred 843
twenty hours per school year. 844

(b) The governing authority will purchase liability 845
insurance, or otherwise provide for the potential liability of 846
the school. 847

(c) The school will be nonsectarian in its programs, 848
admission policies, employment practices, and all other 849
operations, and will not be operated by a sectarian school or 850
religious institution. 851

(d) The school will comply with sections 9.90, 9.91, 852
109.65, 121.22, 149.43, 2151.357, 2151.421, 2313.19, 3301.0710, 853
3301.0711, 3301.0712, 3301.0715, 3301.948, 3313.472, 3313.50, 854
3313.536, 3313.539, 3313.608, 3313.609, 3313.6012, 3313.6013, 855
3313.6014, 3313.6015, 3313.6020, 3313.643, 3313.648, 3313.6411, 856
3313.66, 3313.661, 3313.662, 3313.666, 3313.667, 3313.67, 857
3313.671, 3313.672, 3313.673, 3313.69, 3313.71, 3313.716, 858
3313.718, 3313.719, 3313.7112, 3313.721, 3313.80, 3313.814, 859
3313.816, 3313.817, 3313.86, 3313.89, 3313.96, 3319.073, 860
3319.321, 3319.39, 3319.391, 3319.41, 3319.46, 3321.01, 861
3321.041, 3321.13, 3321.14, 3321.17, 3321.18, 3321.19, 3321.191, 862
3327.10, 4111.17, 4113.52, and 5705.391 and Chapters 117., 863
1347., 2744., 3365., 3742., 4112., 4123., 4141., and 4167. of 864

the Revised Code as if it were a school district and will comply 865
with section 3301.0714 of the Revised Code in the manner 866
specified in section 3314.17 of the Revised Code. 867

(e) The school shall comply with Chapter 102. and section 868
2921.42 of the Revised Code. 869

(f) The school will comply with sections 3313.61, 870
3313.611, and 3313.614 of the Revised Code, except that for 871
students who enter ninth grade for the first time before July 1, 872
2010, the requirement in sections 3313.61 and 3313.611 of the 873
Revised Code that a person must successfully complete the 874
curriculum in any high school prior to receiving a high school 875
diploma may be met by completing the curriculum adopted by the 876
governing authority of the community school rather than the 877
curriculum specified in Title XXXVIII of the Revised Code or any 878
rules of the state board of education. Beginning with students 879
who enter ninth grade for the first time on or after July 1, 880
2010, the requirement in sections 3313.61 and 3313.611 of the 881
Revised Code that a person must successfully complete the 882
curriculum of a high school prior to receiving a high school 883
diploma shall be met by completing the requirements prescribed 884
in division (C) of section 3313.603 of the Revised Code, unless 885
the person qualifies under division (D) or (F) of that section. 886
Each school shall comply with the plan for awarding high school 887
credit based on demonstration of subject area competency, and 888
beginning with the 2016-2017 school year, with the updated plan 889
that permits students enrolled in seventh and eighth grade to 890
meet curriculum requirements based on subject area competency 891
adopted by the state board of education under divisions (J) (1) 892
and (2) of section 3313.603 of the Revised Code. 893

(g) The school governing authority will submit within four 894

months after the end of each school year a report of its 895
activities and progress in meeting the goals and standards of 896
divisions (A) (3) and (4) of this section and its financial 897
status to the sponsor and the parents of all students enrolled 898
in the school. 899

(h) The school, unless it is an internet- or computer- 900
based community school, will comply with section 3313.801 of the 901
Revised Code as if it were a school district. 902

(i) If the school is the recipient of moneys from a grant 903
awarded under the federal race to the top program, Division (A), 904
Title XIV, Sections 14005 and 14006 of the "American Recovery 905
and Reinvestment Act of 2009," Pub. L. No. 111-5, 123 Stat. 115, 906
the school will pay teachers based upon performance in 907
accordance with section 3317.141 and will comply with section 908
3319.111 of the Revised Code as if it were a school district. 909

(j) If the school operates a preschool program that is 910
licensed by the department of education under sections 3301.52 911
to 3301.59 of the Revised Code, the school shall comply with 912
sections 3301.50 to 3301.59 of the Revised Code and the minimum 913
standards for preschool programs prescribed in rules adopted by 914
the state board under section 3301.53 of the Revised Code. 915

(k) The school will comply with sections 3313.6021 and 916
3313.6023 of the Revised Code as if it were a school district 917
unless it is either of the following: 918

(i) An internet- or computer-based community school; 919

(ii) A community school in which a majority of the 920
enrolled students are children with disabilities as described in 921
division (A) (4) (b) of section 3314.35 of the Revised Code. 922

(l) The school will comply with all attendance 923

requirements and standards, including those for excused 924
absences, established by rule of the state board as if it were a 925
school district. Division (A) (11) (1) of this section does not 926
apply to an internet- or computer-based community school 927
sponsored by a school district. 928

(12) Arrangements for providing health and other benefits 929
to employees; 930

(13) The length of the contract, which shall begin at the 931
beginning of an academic year. No contract shall exceed five 932
years unless such contract has been renewed pursuant to division 933
(E) of this section. 934

(14) The governing authority of the school, which shall be 935
responsible for carrying out the provisions of the contract; 936

(15) A financial plan detailing an estimated school budget 937
for each year of the period of the contract and specifying the 938
total estimated per pupil expenditure amount for each such year. 939

(16) Requirements and procedures regarding the disposition 940
of employees of the school in the event the contract is 941
terminated or not renewed pursuant to section 3314.07 of the 942
Revised Code; 943

(17) Whether the school is to be created by converting all 944
or part of an existing public school or educational service 945
center building or is to be a new start-up school, and if it is 946
a converted public school or service center building, 947
specification of any duties or responsibilities of an employer 948
that the board of education or service center governing board 949
that operated the school or building before conversion is 950
delegating to the governing authority of the community school 951
with respect to all or any specified group of employees provided 952

the delegation is not prohibited by a collective bargaining 953
agreement applicable to such employees; 954

(18) Provisions establishing procedures for resolving 955
disputes or differences of opinion between the sponsor and the 956
governing authority of the community school; 957

(19) A provision requiring the governing authority to 958
adopt a policy regarding the admission of students who reside 959
outside the district in which the school is located. That policy 960
shall comply with the admissions procedures specified in 961
sections 3314.06 and 3314.061 of the Revised Code and, at the 962
sole discretion of the authority, shall do one of the following: 963

(a) Prohibit the enrollment of students who reside outside 964
the district in which the school is located; 965

(b) Permit the enrollment of students who reside in 966
districts adjacent to the district in which the school is 967
located; 968

(c) Permit the enrollment of students who reside in any 969
other district in the state. 970

(20) A provision recognizing the authority of the 971
department of education to take over the sponsorship of the 972
school in accordance with the provisions of division (C) of 973
section 3314.015 of the Revised Code; 974

(21) A provision recognizing the sponsor's authority to 975
assume the operation of a school under the conditions specified 976
in division (B) of section 3314.073 of the Revised Code; 977

(22) A provision recognizing both of the following: 978

(a) The authority of public health and safety officials to 979
inspect the facilities of the school and to order the facilities 980

closed if those officials find that the facilities are not in 981
compliance with health and safety laws and regulations; 982

(b) The authority of the department of education as the 983
community school oversight body to suspend the operation of the 984
school under section 3314.072 of the Revised Code if the 985
department has evidence of conditions or violations of law at 986
the school that pose an imminent danger to the health and safety 987
of the school's students and employees and the sponsor refuses 988
to take such action. 989

(23) A description of the learning opportunities that will 990
be ~~offered~~provided to students including both classroom-based 991
and non-classroom-based learning opportunities that is in 992
compliance with criteria for student participation established 993
by the department under division (H) (2) of section 3314.08 of 994
the Revised Code; 995

(24) The school will comply with sections 3302.04 and 996
3302.041 of the Revised Code, except that any action required to 997
be taken by a school district pursuant to those sections shall 998
be taken by the sponsor of the school. However, the sponsor 999
shall not be required to take any action described in division 1000
(F) of section 3302.04 of the Revised Code. 1001

(25) Beginning in the 2006-2007 school year, the school 1002
will open for operation not later than the thirtieth day of 1003
September each school year, unless the mission of the school as 1004
specified under division (A) (2) of this section is solely to 1005
serve dropouts. In its initial year of operation, if the school 1006
fails to open by the thirtieth day of September, or within one 1007
year after the adoption of the contract pursuant to division (D) 1008
of section 3314.02 of the Revised Code if the mission of the 1009
school is solely to serve dropouts, the contract shall be void. 1010

(26) Whether the school's governing authority is planning 1011
to seek designation for the school as a STEM school equivalent 1012
under section 3326.032 of the Revised Code; 1013

(27) That the school's attendance and participation 1014
policies will be available for public inspection; 1015

(28) That the school's attendance and participation 1016
records shall be made available to the department of education, 1017
auditor of state, and school's sponsor to the extent permitted 1018
under and in accordance with the "Family Educational Rights and 1019
Privacy Act of 1974," 88 Stat. 571, 20 U.S.C. 1232g, as amended, 1020
and any regulations promulgated under that act, and section 1021
3319.321 of the Revised Code; 1022

(29) If a school operates using the blended learning 1023
model, as defined in section 3301.079 of the Revised Code, all 1024
of the following information: 1025

(a) An indication of what blended learning model or models 1026
will be used; 1027

(b) A description of how student instructional needs will 1028
be determined and documented; 1029

(c) The method to be used for determining competency, 1030
granting credit, and promoting students to a higher grade level; 1031

(d) The school's attendance requirements, including how 1032
the school will document participation in learning 1033
opportunities; 1034

(e) A statement describing how student progress will be 1035
monitored; 1036

(f) A statement describing how private student data will 1037
be protected; 1038

(g) A description of the professional development 1039
activities that will be offered to teachers. 1040

(30) A provision requiring that all moneys the school's 1041
operator loans to the school, including facilities loans or cash 1042
flow assistance, must be accounted for, documented, and bear 1043
interest at a fair market rate; 1044

(31) A provision requiring that, if the governing 1045
authority contracts with an attorney, accountant, or entity 1046
specializing in audits, the attorney, accountant, or entity 1047
shall be independent from the operator with which the school has 1048
contracted. 1049

(B) The community school shall also submit to the sponsor 1050
a comprehensive plan for the school. The plan shall specify the 1051
following: 1052

(1) The process by which the governing authority of the 1053
school will be selected in the future; 1054

(2) The management and administration of the school; 1055

(3) If the community school is a currently existing public 1056
school or educational service center building, alternative 1057
arrangements for current public school students who choose not 1058
to attend the converted school and for teachers who choose not 1059
to teach in the school or building after conversion; 1060

(4) The instructional program and educational philosophy 1061
of the school; 1062

(5) Internal financial controls. 1063

When submitting the plan under this division, the school 1064
shall also submit copies of all policies and procedures 1065
regarding internal financial controls adopted by the governing 1066

authority of the school. 1067

(C) A contract entered into under section 3314.02 of the 1068
Revised Code between a sponsor and the governing authority of a 1069
community school may provide for the community school governing 1070
authority to make payments to the sponsor, which is hereby 1071
authorized to receive such payments as set forth in the contract 1072
between the governing authority and the sponsor. The total 1073
amount of such payments for monitoring, oversight, and technical 1074
assistance of the school shall not exceed three per cent of the 1075
total amount of payments for operating expenses that the school 1076
receives from the state. 1077

(D) The contract shall specify the duties of the sponsor 1078
which shall be in accordance with the written agreement entered 1079
into with the department of education under division (B) of 1080
section 3314.015 of the Revised Code and shall include the 1081
following: 1082

(1) Monitor the community school's compliance with all 1083
laws applicable to the school and with the terms of the 1084
contract; 1085

(2) Monitor and evaluate the academic and fiscal 1086
performance and the organization and operation of the community 1087
school on at least an annual basis; 1088

(3) Report on an annual basis the results of the 1089
evaluation conducted under division (D) (2) of this section to 1090
the department of education and to the parents of students 1091
enrolled in the community school; 1092

(4) Provide technical assistance to the community school 1093
in complying with laws applicable to the school and terms of the 1094
contract; 1095

(5) Take steps to intervene in the school's operation to 1096
correct problems in the school's overall performance, declare 1097
the school to be on probationary status pursuant to section 1098
3314.073 of the Revised Code, suspend the operation of the 1099
school pursuant to section 3314.072 of the Revised Code, or 1100
terminate the contract of the school pursuant to section 3314.07 1101
of the Revised Code as determined necessary by the sponsor; 1102

(6) Have in place a plan of action to be undertaken in the 1103
event the community school experiences financial difficulties or 1104
closes prior to the end of a school year. 1105

(E) Upon the expiration of a contract entered into under 1106
this section, the sponsor of a community school may, with the 1107
approval of the governing authority of the school, renew that 1108
contract for a period of time determined by the sponsor, but not 1109
ending earlier than the end of any school year, if the sponsor 1110
finds that the school's compliance with applicable laws and 1111
terms of the contract and the school's progress in meeting the 1112
academic goals prescribed in the contract have been 1113
satisfactory. Any contract that is renewed under this division 1114
remains subject to the provisions of sections 3314.07, 3314.072, 1115
and 3314.073 of the Revised Code. 1116

(F) If a community school fails to open for operation 1117
within one year after the contract entered into under this 1118
section is adopted pursuant to division (D) of section 3314.02 1119
of the Revised Code or permanently closes prior to the 1120
expiration of the contract, the contract shall be void and the 1121
school shall not enter into a contract with any other sponsor. A 1122
school shall not be considered permanently closed because the 1123
operations of the school have been suspended pursuant to section 1124
3314.072 of the Revised Code. 1125

Sec. 3314.032. (A) On and after the effective date of this 1126
section, any new or renewed contract between the governing 1127
authority of a community school and an operator shall include at 1128
least the following: 1129

(1) Criteria to be used for early termination of the 1130
operator contract; 1131

(2) Required notification procedures and timeline for 1132
early termination or nonrenewal of the operator contract; 1133

(3) A stipulation of which entity owns all community 1134
school facilities and property including, but not limited to, 1135
equipment, furniture, fixtures, instructional materials and 1136
supplies, computers, printers, and other digital devices 1137
purchased by the governing authority or operator. Any 1138
stipulation regarding property ownership shall comply with the 1139
requirements of section 3314.0210 of the Revised Code. 1140

(B) (1) The operator with which the governing authority of 1141
a community school contracts for services shall not lease any 1142
parcel of real property to that community school until an 1143
independent professional in the real estate field verifies via 1144
addendum that at the time the lease was agreed to, the lease was 1145
commercially reasonable. 1146

(2) The independent professional described in division (B) 1147
(1) of this section shall be immune from civil liability for any 1148
decision rendered pursuant to this section. 1149

(C) Beginning with the 2016-2017 school year, the 1150
governing authority of a community school, with the assistance 1151
of the school's designated fiscal officer, shall adopt an annual 1152
budget by the thirty-first day of October of each year. 1153

Not later than ninety days after the effective date of 1154

this section, the department of education shall develop a format 1155
for annual budgets of community schools. The format shall 1156
prescribe inclusion of the following information in a school's 1157
budget: 1158

(1) Administrative costs for the community school as a 1159
whole; 1160

(2) Instructional services costs for each category of 1161
service provided directly to students, compiled and reported in 1162
terms of average expenditure per pupil receiving the service; 1163

(3) The cost of instructional support services, such as 1164
services provided by a speech-language pathologist, classroom 1165
aide, multimedia aide, or librarian, provided directly to 1166
students; 1167

(4) The cost of administrative support services, such as 1168
the cost of personnel that develop the curriculum and the cost 1169
of personnel supervising or coordinating the delivery of the 1170
instructional services; 1171

(5) The cost of support or extracurricular services costs 1172
for services directly provided to students; 1173

(6) The cost of services provided directly to students by 1174
a nonlicensed employee related to support or extracurricular 1175
services, such as janitorial services, cafeteria services, or 1176
services of a sports trainer; 1177

(7) The cost of administrative services related to support 1178
or extracurricular services, such as the cost of any licensed or 1179
unlicensed employees that develop, supervise, coordinate, or 1180
otherwise are involved in administrating or aiding the delivery 1181
of services. 1182

(D) The governing authority of a community school shall be 1183
the sole entity responsible for the adoption of the school's 1184
annual budget, but the governing authority shall adopt such 1185
budget with the assistance of the school's designated fiscal 1186
officer. 1187

(E) On and after the effective date of this amendment, the 1188
duration of any new or renewed contract between the governing 1189
authority of a community school and an operator shall not exceed 1190
a term of three years. 1191

(F) The contract between the governing authority of a 1192
community school and an operator may be renewed provided that, 1193
upon renewal, the parties incorporate into the contract 1194
references to, and comply with, any and all applicable 1195
provisions of this chapter that were amended or enacted prior to 1196
the effective date of the renewed contract. 1197

Sec. 3314.08. (A) As used in this section: 1198

(1) (a) "Category one career-technical education student" 1199
means a student who is receiving the career-technical education 1200
services described in division (A) of section 3317.014 of the 1201
Revised Code. 1202

(b) "Category two career-technical student" means a 1203
student who is receiving the career-technical education services 1204
described in division (B) of section 3317.014 of the Revised 1205
Code. 1206

(c) "Category three career-technical student" means a 1207
student who is receiving the career-technical education services 1208
described in division (C) of section 3317.014 of the Revised 1209
Code. 1210

(d) "Category four career-technical student" means a 1211

student who is receiving the career-technical education services 1212
described in division (D) of section 3317.014 of the Revised 1213
Code. 1214

(e) "Category five career-technical education student" 1215
means a student who is receiving the career-technical education 1216
services described in division (E) of section 3317.014 of the 1217
Revised Code. 1218

(2) (a) "Category one limited English proficient student" 1219
means a limited English proficient student described in division 1220
(A) of section 3317.016 of the Revised Code. 1221

(b) "Category two limited English proficient student" 1222
means a limited English proficient student described in division 1223
(B) of section 3317.016 of the Revised Code. 1224

(c) "Category three limited English proficient student" 1225
means a limited English proficient student described in division 1226
(C) of section 3317.016 of the Revised Code. 1227

(3) (a) "Category one special education student" means a 1228
student who is receiving special education services for a 1229
disability specified in division (A) of section 3317.013 of the 1230
Revised Code. 1231

(b) "Category two special education student" means a 1232
student who is receiving special education services for a 1233
disability specified in division (B) of section 3317.013 of the 1234
Revised Code. 1235

(c) "Category three special education student" means a 1236
student who is receiving special education services for a 1237
disability specified in division (C) of section 3317.013 of the 1238
Revised Code. 1239

(d) "Category four special education student" means a 1240
student who is receiving special education services for a 1241
disability specified in division (D) of section 3317.013 of the 1242
Revised Code. 1243

(e) "Category five special education student" means a 1244
student who is receiving special education services for a 1245
disability specified in division (E) of section 3317.013 of the 1246
Revised Code. 1247

(f) "Category six special education student" means a 1248
student who is receiving special education services for a 1249
disability specified in division (F) of section 3317.013 of the 1250
Revised Code. 1251

(4) "Formula amount" has the same meaning as in section 1252
3317.02 of the Revised Code. 1253

(5) "IEP" has the same meaning as in section 3323.01 of 1254
the Revised Code. 1255

(6) "Resident district" means the school district in which 1256
a student is entitled to attend school under section 3313.64 or 1257
3313.65 of the Revised Code. 1258

(7) "State education aid" has the same meaning as in 1259
section 5751.20 of the Revised Code. 1260

(B) The state board of education shall adopt rules 1261
requiring both of the following: 1262

(1) The board of education of each city, exempted village, 1263
and local school district to annually report the number of 1264
students entitled to attend school in the district who are 1265
enrolled in each grade kindergarten through twelve in a 1266
community school established under this chapter, and for each 1267

child, the community school in which the child is enrolled. 1268

(2) The governing authority of each community school 1269
established under this chapter to annually report all of the 1270
following: 1271

(a) The number of students enrolled in grades one through 1272
twelve and the full-time equivalent number of students enrolled 1273
in kindergarten in the school who are not receiving special 1274
education and related services pursuant to an IEP; 1275

(b) The number of enrolled students in grades one through 1276
twelve and the full-time equivalent number of enrolled students 1277
in kindergarten, who are receiving special education and related 1278
services pursuant to an IEP; 1279

(c) The number of students reported under division (B) (2) 1280
(b) of this section receiving special education and related 1281
services pursuant to an IEP for a disability described in each 1282
of divisions (A) to (F) of section 3317.013 of the Revised Code; 1283

(d) The full-time equivalent number of students reported 1284
under divisions (B) (2) (a) and (b) of this section who are 1285
enrolled in career-technical education programs or classes 1286
described in each of divisions (A) to (E) of section 3317.014 of 1287
the Revised Code that are provided by the community school; 1288

(e) The number of students reported under divisions (B) (2) 1289
(a) and (b) of this section who are not reported under division 1290
(B) (2) (d) of this section but who are enrolled in career- 1291
technical education programs or classes described in each of 1292
divisions (A) to (E) of section 3317.014 of the Revised Code at 1293
a joint vocational school district or another district in the 1294
career-technical planning district to which the school is 1295
assigned; 1296

(f) The number of students reported under divisions (B) (2) 1297
(a) and (b) of this section who are category one to three 1298
limited English proficient students described in each of 1299
divisions (A) to (C) of section 3317.016 of the Revised Code; 1300

(g) The number of students reported under divisions (B) (2) 1301
(a) and (b) who are economically disadvantaged, as defined by 1302
the department. A student shall not be categorically excluded 1303
from the number reported under division (B) (2) (g) of this 1304
section based on anything other than family income. 1305

(h) For each student, the city, exempted village, or local 1306
school district in which the student is entitled to attend 1307
school under section 3313.64 or 3313.65 of the Revised Code. 1308

(i) The number of students enrolled in a preschool program 1309
operated by the school that is licensed by the department of 1310
education under sections 3301.52 to 3301.59 of the Revised Code 1311
who are not receiving special education and related services 1312
pursuant to an IEP. 1313

A school district board and a community school governing 1314
authority shall include in their respective reports under 1315
division (B) of this section any child admitted in accordance 1316
with division (A) (2) of section 3321.01 of the Revised Code. 1317

A governing authority of a community school shall not 1318
include in its report under divisions (B) (2) (a) to (h) of this 1319
section any student for whom tuition is charged under division 1320
(F) of this section. 1321

(C) (1) Except as provided in division (C) (2) of this 1322
section, and subject to divisions (C) (3), (4), (5), (6), and (7) 1323
of this section, on a full-time equivalency basis, for each 1324
student enrolled in a community school established under this 1325

chapter, the department of education annually shall deduct from 1326
the state education aid of a student's resident district and, if 1327
necessary, from the payment made to the district under sections 1328
321.24 and 323.156 of the Revised Code and pay to the community 1329
school the sum of the following: 1330

(a) An opportunity grant in an amount equal to the formula 1331
amount; 1332

(b) The per pupil amount of targeted assistance funds 1333
calculated under division (A) of section 3317.0217 of the 1334
Revised Code for the student's resident district, as determined 1335
by the department, X 0.25; 1336

(c) Additional state aid for special education and related 1337
services provided under Chapter 3323. of the Revised Code as 1338
follows: 1339

(i) If the student is a category one special education 1340
student, the amount specified in division (A) of section 1341
3317.013 of the Revised Code; 1342

(ii) If the student is a category two special education 1343
student, the amount specified in division (B) of section 1344
3317.013 of the Revised Code; 1345

(iii) If the student is a category three special education 1346
student, the amount specified in division (C) of section 1347
3317.013 of the Revised Code; 1348

(iv) If the student is a category four special education 1349
student, the amount specified in division (D) of section 1350
3317.013 of the Revised Code; 1351

(v) If the student is a category five special education 1352
student, the amount specified in division (E) of section 1353

3317.013 of the Revised Code; 1354

(vi) If the student is a category six special education 1355
student, the amount specified in division (F) of section 1356
3317.013 of the Revised Code. 1357

(d) If the student is in kindergarten through third grade, 1358
an additional amount of \$305, in fiscal year 2016, and \$320, in 1359
fiscal year 2017; 1360

(e) If the student is economically disadvantaged, an 1361
additional amount equal to the following: 1362

\$272 X the resident district's economically disadvantaged 1363
index 1364

(f) Limited English proficiency funds as follows: 1365

(i) If the student is a category one limited English 1366
proficient student, the amount specified in division (A) of 1367
section 3317.016 of the Revised Code; 1368

(ii) If the student is a category two limited English 1369
proficient student, the amount specified in division (B) of 1370
section 3317.016 of the Revised Code; 1371

(iii) If the student is a category three limited English 1372
proficient student, the amount specified in division (C) of 1373
section 3317.016 of the Revised Code. 1374

(g) If the student is reported under division (B) (2) (d) of 1375
this section, career-technical education funds as follows: 1376

(i) If the student is a category one career-technical 1377
education student, the amount specified in division (A) of 1378
section 3317.014 of the Revised Code; 1379

(ii) If the student is a category two career-technical 1380

education student, the amount specified in division (B) of 1381
section 3317.014 of the Revised Code; 1382

(iii) If the student is a category three career-technical 1383
education student, the amount specified in division (C) of 1384
section 3317.014 of the Revised Code; 1385

(iv) If the student is a category four career-technical 1386
education student, the amount specified in division (D) of 1387
section 3317.014 of the Revised Code; 1388

(v) If the student is a category five career-technical 1389
education student, the amount specified in division (E) of 1390
section 3317.014 of the Revised Code. 1391

Deduction and payment of funds under division (C)(1)(g) of 1392
this section is subject to approval by the lead district of a 1393
career-technical planning district or the department of 1394
education under section 3317.161 of the Revised Code. 1395

(2) When deducting from the state education aid of a 1396
student's resident district for students enrolled in an 1397
internet- or computer-based community school and making payments 1398
to such school under this section, the department shall make the 1399
deductions and payments described in only divisions (C)(1)(a), 1400
(c), and (g) of this section. 1401

No deductions or payments shall be made for a student 1402
enrolled in such school under division (C)(1)(b), (d), (e), or 1403
(f) of this section. 1404

(3)(a) If a community school's costs for a fiscal year for 1405
a student receiving special education and related services 1406
pursuant to an IEP for a disability described in divisions (B) 1407
to (F) of section 3317.013 of the Revised Code exceed the 1408
threshold catastrophic cost for serving the student as specified 1409

in division (B) of section 3317.0214 of the Revised Code, the 1410
school may submit to the superintendent of public instruction 1411
documentation, as prescribed by the superintendent, of all its 1412
costs for that student. Upon submission of documentation for a 1413
student of the type and in the manner prescribed, the department 1414
shall pay to the community school an amount equal to the 1415
school's costs for the student in excess of the threshold 1416
catastrophic costs. 1417

(b) The community school shall report under division (C) 1418
(3)(a) of this section, and the department shall pay for, only 1419
the costs of educational expenses and the related services 1420
provided to the student in accordance with the student's 1421
individualized education program. Any legal fees, court costs, 1422
or other costs associated with any cause of action relating to 1423
the student may not be included in the amount. 1424

(4) In any fiscal year, a community school receiving funds 1425
under division (C)(1)(g) of this section shall spend those funds 1426
only for the purposes that the department designates as approved 1427
for career-technical education expenses. Career-technical 1428
education expenses approved by the department shall include only 1429
expenses connected to the delivery of career-technical 1430
programming to career-technical students. The department shall 1431
require the school to report data annually so that the 1432
department may monitor the school's compliance with the 1433
requirements regarding the manner in which funding received 1434
under division (C)(1)(g) of this section may be spent. 1435

(5) Notwithstanding anything to the contrary in section 1436
3313.90 of the Revised Code, except as provided in division (C) 1437
(9) of this section, all funds received under division (C)(1)(g) 1438
of this section shall be spent in the following manner: 1439

(a) At least seventy-five per cent of the funds shall be 1440
spent on curriculum development, purchase, and implementation; 1441
instructional resources and supplies; industry-based program 1442
certification; student assessment, credentialing, and placement; 1443
curriculum specific equipment purchases and leases; career- 1444
technical student organization fees and expenses; home and 1445
agency linkages; work-based learning experiences; professional 1446
development; and other costs directly associated with career- 1447
technical education programs including development of new 1448
programs. 1449

(b) Not more than twenty-five per cent of the funds shall 1450
be used for personnel expenditures. 1451

(6) A community school shall spend the funds it receives 1452
under division (C) (1) (e) of this section in accordance with 1453
section 3317.25 of the Revised Code. 1454

(7) If the sum of the payments computed under divisions 1455
(C) (1) and (8) (a) of this section for the students entitled to 1456
attend school in a particular school district under sections 1457
3313.64 and 3313.65 of the Revised Code exceeds the sum of that 1458
district's state education aid and its payment under sections 1459
321.24 and 323.156 of the Revised Code, the department shall 1460
calculate and apply a proration factor to the payments to all 1461
community schools under that division for the students entitled 1462
to attend school in that district. 1463

(8) (a) Subject to division (C) (7) of this section, the 1464
department annually shall pay to each community school, 1465
including each internet- or computer-based community school, an 1466
amount equal to the following: 1467

(The number of students reported by the community school 1468

under division (B) (2) (e) of this section X the formula amount 1469
X .20) 1470

(b) For each payment made to a community school under 1471
division (C) (8) (a) of this section, the department shall deduct 1472
from the state education aid of each city, local, and exempted 1473
village school district and, if necessary, from the payment made 1474
to the district under sections 321.24 and 323.156 of the Revised 1475
Code an amount equal to the following: 1476

(The number of the district's students reported by the 1477
community school under division (B) (2) (e) of this section X the 1478
formula amount X .20) 1479

(9) The department may waive the requirement in division 1480
(C) (5) of this section for any community school that exclusively 1481
provides one or more career-technical workforce development 1482
programs in arts and communications that are not equipment- 1483
intensive, as determined by the department. 1484

(D) A board of education sponsoring a community school may 1485
utilize local funds to make enhancement grants to the school or 1486
may agree, either as part of the contract or separately, to 1487
provide any specific services to the community school at no cost 1488
to the school. 1489

(E) A community school may not levy taxes or issue bonds 1490
secured by tax revenues. 1491

(F) No community school shall charge tuition for the 1492
enrollment of any student who is a resident of this state. A 1493
community school may charge tuition for the enrollment of any 1494
student who is not a resident of this state. 1495

(G) (1) (a) A community school may borrow money to pay any 1496
necessary and actual expenses of the school in anticipation of 1497

the receipt of any portion of the payments to be received by the 1498
school pursuant to division (C) of this section. The school may 1499
issue notes to evidence such borrowing. The proceeds of the 1500
notes shall be used only for the purposes for which the 1501
anticipated receipts may be lawfully expended by the school. 1502

(b) A school may also borrow money for a term not to 1503
exceed fifteen years for the purpose of acquiring facilities. 1504

(2) Except for any amount guaranteed under section 3318.50 1505
of the Revised Code, the state is not liable for debt incurred 1506
by the governing authority of a community school. 1507

(H) The department of education shall adjust the amounts 1508
subtracted and paid under division (C) of this section to 1509
reflect any enrollment of students in community schools for less 1510
than the equivalent of a full school year. The state board of 1511
education within ninety days after April 8, 2003, shall adopt in 1512
accordance with Chapter 119. of the Revised Code rules governing 1513
the payments to community schools under this section including 1514
initial payments in a school year and adjustments and reductions 1515
made in subsequent periodic payments to community schools and 1516
corresponding deductions from school district accounts as 1517
provided under division (C) of this section. For purposes of 1518
this section: 1519

(1) A student shall be considered enrolled in the 1520
community school for any portion of the school year the student 1521
is participating at a college under Chapter 3365. of the Revised 1522
Code. 1523

(2) A student shall be considered to be enrolled in a 1524
community school for the period of time beginning on the later 1525
of the date on which the school both has received documentation 1526

of the student's enrollment from a parent and the student has 1527
commenced participation in learning opportunities as defined in 1528
the contract with the sponsor, or thirty days prior to the date 1529
on which the student is entered into the education management 1530
information system established under section 3301.0714 of the 1531
Revised Code. For purposes of applying this division and 1532
divisions (H) (3) and (4) of this section to a community school 1533
student, "learning opportunities" shall be defined in the 1534
contract, which shall describe both classroom-based and non- 1535
classroom-based learning opportunities and shall be in 1536
compliance with criteria and documentation requirements for 1537
student participation which shall be established by the 1538
department. Any student's instruction time in non-classroom- 1539
based learning opportunities shall be certified by an employee 1540
of the community school. A student's enrollment shall be 1541
considered to cease on the date on which any of the following 1542
occur: 1543

(a) The community school receives documentation from a 1544
parent terminating enrollment of the student. 1545

(b) The community school is provided documentation of a 1546
student's enrollment in another public or private school. 1547

(c) The community school ceases to ~~offer~~ provide learning 1548
opportunities to the student pursuant to the terms of the 1549
contract with the sponsor or the operation of any provision of 1550
this chapter. 1551

Except as otherwise specified in this paragraph, beginning 1552
in the 2011-2012 school year, any student who completed the 1553
prior school year in an internet- or computer-based community 1554
school shall be considered to be enrolled in the same school in 1555
the subsequent school year until the student's enrollment has 1556

ceased as specified in division (H) (2) of this section. The 1557
department shall continue subtracting and paying amounts for the 1558
student under division (C) of this section without interruption 1559
at the start of the subsequent school year. However, unless 1560
section 3314.088 of the Revised Code applies to the student, if 1561
the student without a legitimate excuse fails to participate in 1562
the first one hundred five consecutive hours of learning 1563
opportunities ~~offered~~ provided to the student in that subsequent 1564
school year, the student shall be considered not to have re- 1565
enrolled in the school for that school year and the department 1566
shall recalculate the payments to the school for that school 1567
year to account for the fact that the student is not enrolled. 1568

(3) The department shall determine each community school 1569
student's percentage of full-time equivalency based on the 1570
percentage of learning opportunities ~~offered~~ provided by the 1571
community school to that student, reported either as number of 1572
hours or number of days, is of the total learning opportunities 1573
~~offered~~ provided by the community school to a student who 1574
attends for the school's entire school year. However, no 1575
internet- or computer-based community school shall be credited 1576
for any time a student spends participating in learning 1577
opportunities beyond ten hours within any period of twenty-four 1578
consecutive hours. Whether it reports hours or days of learning 1579
opportunities, each community school shall ~~offer~~ provide not 1580
less than nine hundred twenty hours of learning opportunities 1581
during the school year. 1582

In the case of an internet- or computer-based community 1583
school that is not sponsored by a school district, when 1584
determining a student's percentage of full-time equivalency 1585
under division (H) (3) of this section, the "percentage of 1586
learning opportunities provided by the community school to that 1587

student" shall be equal to the amount of time that the student 1588
was actively engaged in learning opportunities during that 1589
school year, unless section 3314.088 of the Revised Code applies 1590
to the student. 1591

(4) With respect to the calculation of full-time 1592
equivalency under division (H) (3) of this section, the 1593
department shall waive the number of hours or days of learning 1594
opportunities not ~~offered~~ provided to a student because the 1595
community school was closed during the school year due to 1596
disease epidemic, hazardous weather conditions, law enforcement 1597
emergencies, inoperability of school buses or other equipment 1598
necessary to the school's operation, damage to a school 1599
building, or other temporary circumstances due to utility 1600
failure rendering the school building unfit for school use, so 1601
long as the school was actually open for instruction with 1602
students in attendance during that school year for not less than 1603
the minimum number of hours required by this chapter. The 1604
department shall treat the school as if it were open for 1605
instruction with students in attendance during the hours or days 1606
waived under this division. 1607

(I) The department of education shall reduce the amounts 1608
paid under this section to reflect payments made to colleges 1609
under section 3365.07 of the Revised Code. 1610

(J) (1) No student shall be considered enrolled in any 1611
internet- or computer-based community school or, if applicable 1612
to the student, in any community school that is required to 1613
provide the student with a computer pursuant to division (C) of 1614
section 3314.22 of the Revised Code, unless both of the 1615
following conditions are satisfied: 1616

(a) The student possesses or has been provided with all 1617

required hardware and software materials and all such materials 1618
are operational so that the student is capable of fully 1619
participating in the learning opportunities specified in the 1620
contract between the school and the school's sponsor as required 1621
by division (A) (23) of section 3314.03 of the Revised Code; 1622

(b) The school is in compliance with division (A) of 1623
section 3314.22 of the Revised Code, relative to such student. 1624

(2) In accordance with policies adopted jointly by the 1625
superintendent of public instruction and the auditor of state, 1626
the department shall reduce the amounts otherwise payable under 1627
division (C) of this section to any community school that 1628
includes in its program the provision of computer hardware and 1629
software materials to any student, if such hardware and software 1630
materials have not been delivered, installed, and activated for 1631
each such student in a timely manner or other educational 1632
materials or services have not been provided according to the 1633
contract between the individual community school and its 1634
sponsor. 1635

The superintendent of public instruction and the auditor 1636
of state shall jointly establish a method for auditing any 1637
community school to which this division pertains to ensure 1638
compliance with this section. 1639

The superintendent, auditor of state, and the governor 1640
shall jointly make recommendations to the general assembly for 1641
legislative changes that may be required to assure fiscal and 1642
academic accountability for such schools. 1643

(K) (1) If the department determines that a review of a 1644
community school's enrollment is necessary, such review shall be 1645
completed and written notice of the findings shall be provided 1646

to the governing authority of the community school and its 1647
sponsor within ninety days of the end of the community school's 1648
fiscal year, unless extended for a period not to exceed thirty 1649
additional days for one of the following reasons: 1650

(a) The department and the community school mutually agree 1651
to the extension. 1652

(b) Delays in data submission caused by either a community 1653
school or its sponsor. 1654

(2) If the review results in a finding that additional 1655
funding is owed to the school, such payment shall be made within 1656
thirty days of the written notice. If the review results in a 1657
finding that the community school owes moneys to the state, the 1658
following procedure shall apply: 1659

(a) Within ten business days of the receipt of the notice 1660
of findings, the community school may appeal the department's 1661
determination to the state board of education or its designee. 1662

(b) The board or its designee shall conduct an informal 1663
hearing on the matter within thirty days of receipt of such an 1664
appeal and shall issue a decision within fifteen days of the 1665
conclusion of the hearing. 1666

(c) If the board has enlisted a designee to conduct the 1667
hearing, the designee shall certify its decision to the board. 1668
The board may accept the decision of the designee or may reject 1669
the decision of the designee and issue its own decision on the 1670
matter. 1671

(d) Any decision made by the board under this division is 1672
final. 1673

(3) If it is decided that the community school owes moneys 1674

to the state, the department shall deduct such amount from the 1675
school's future payments in accordance with guidelines issued by 1676
the superintendent of public instruction. 1677

(L) The department shall not subtract from a school 1678
district's state aid account and shall not pay to a community 1679
school under division (C) of this section any amount for any of 1680
the following: 1681

(1) Any student who has graduated from the twelfth grade 1682
of a public or nonpublic high school; 1683

(2) Any student who is not a resident of the state; 1684

(3) Any student who was enrolled in the community school 1685
during the previous school year when assessments were 1686
administered under section 3301.0711 of the Revised Code but did 1687
not take one or more of the assessments required by that section 1688
and was not excused pursuant to division (C)(1) or (3) of that 1689
section, unless the superintendent of public instruction grants 1690
the student a waiver from the requirement to take the assessment 1691
and a parent is not paying tuition for the student pursuant to 1692
section 3314.26 of the Revised Code. The superintendent may 1693
grant a waiver only for good cause in accordance with rules 1694
adopted by the state board of education. 1695

(4) Any student who has attained the age of twenty-two 1696
years, except for veterans of the armed services whose 1697
attendance was interrupted before completing the recognized 1698
twelve-year course of the public schools by reason of induction 1699
or enlistment in the armed forces and who apply for enrollment 1700
in a community school not later than four years after 1701
termination of war or their honorable discharge. If, however, 1702
any such veteran elects to enroll in special courses organized 1703

for veterans for whom tuition is paid under federal law, or 1704
otherwise, the department shall not subtract from a school 1705
district's state aid account and shall not pay to a community 1706
school under division (C) of this section any amount for that 1707
veteran. 1708

Sec. 3314.088. In extenuating circumstances, as specified 1709
in rules adopted by the state board of education pursuant to 1710
this section, a high-performing student enrolled in an internet- 1711
or computer-based community school not sponsored by a school 1712
district shall not be subject to the withdrawal requirement, for 1713
being absent without legitimate excuse for one hundred five 1714
hours of learning opportunities, prescribed by division (A) (6) 1715
of section 3314.03 and division (H) (2) of section 3314.08 of the 1716
Revised Code. Additionally, for purposes of determining that 1717
student's percentage of full-time equivalency under division (H) 1718
(3) of section 3314.08 of the Revised Code, the "percentage of 1719
learning opportunities provided by the community school to that 1720
student" shall not be required to equal the amount of time that 1721
the student was actively engaging in learning opportunities 1722
during that school year. 1723

Not later than ninety days after the effective date of 1724
this section, the state board shall adopt rules, in accordance 1725
with Chapter 119. of the Revised Code, for purposes of 1726
implementing this section. The rules shall include a definition 1727
of "high-performing student" and specify both the extenuating 1728
circumstances under which a student may qualify under this 1729
section and any necessary parameters for determining a high- 1730
performing student's percentage of full-time equivalency. 1731

Sec. 3314.23. (A) Subject to division (B) of this section, 1732
each internet- or computer-based community school shall comply 1733

with the standards developed by the international association 1734
for K-12 online learning. 1735

(B) Each internet- or computer-based community school that 1736
initially opens for operation on or after January 1, 2013, shall 1737
comply with the standards required by division (A) of this 1738
section at the time it opens. Each internet- or computer-based 1739
community school that initially opened for operation prior to 1740
January 1, 2013, shall comply with the standards required by 1741
division (A) of this section not later than July 1, 2013. 1742

(C) The sponsor of each internet- or computer-based 1743
community school shall be responsible for monitoring, ensuring, 1744
and reporting compliance with the online learning standards 1745
described in divisions (A) and (B) of this section and shall 1746
report a school's failure to comply with these standards to the 1747
department of education in the manner prescribed by the 1748
department. 1749

Sec. 3314.241. All public meetings of the governing 1750
authority of an internet- or computer-based community school not 1751
sponsored by a school district shall be made available online to 1752
the public in a format that is viewable as a live event through 1753
the internet. Notice of each meeting shall be given at least two 1754
weeks prior to the meeting by publication in at least one 1755
newspaper of general circulation within each city or county from 1756
which the school currently enrolls a student. 1757

Nothing in this section shall be construed to exempt an 1758
internet- or computer-based community school from complying with 1759
the provisions of the open meetings laws, as prescribed by 1760
division (A) (11) (d) of section 3314.03 of the Revised Code. 1761

Sec. 3314.242. Any internet- or computer-based community 1762

school not sponsored by a school district shall include in any 1763
advertising, recruiting, or promotional materials the most 1764
recent rating or letter grade for overall academic performance, 1765
performance index score, overall value-added progress dimension 1766
score, and the four- and five- year adjusted cohort graduation 1767
rate scores assigned to the school by the department of 1768
education under divisions (B) (1) (b), (d), and (e); (C) (1) (b), 1769
(d), and (e); and (C) (3) of section 3302.03 of the Revised Code. 1770

Sec. 3314.27. (A) No student enrolled in an internet- or 1771
computer-based community school may participate in more than ten 1772
hours of learning opportunities in any period of twenty-four 1773
consecutive hours. Any time such a student participates in 1774
learning opportunities beyond the limit prescribed in this 1775
section shall not count toward the annual minimum number of 1776
hours required to be provided to that student as prescribed in 1777
division (A) (11) (a) of section 3314.03 of the Revised Code. If 1778
any internet- or computer-based community school requires its 1779
students to participate in learning opportunities on the basis 1780
of days rather than hours, one day shall consist of a minimum of 1781
five hours of such participation. 1782

(B) Each internet- or computer-based community school 1783
shall keep an accurate record of each individual student's 1784
participation in learning opportunities each day. The record 1785
shall be kept in such a manner that the information contained 1786
within it easily can be submitted to the department of 1787
education, upon request by the department or the auditor of 1788
state. 1789

(C) Each internet- or computer-based community school that 1790
is not sponsored by a school district shall keep an accurate 1791
record of the number of hours in which each student is actively 1792

participating in learning opportunities during each period of 1793
twenty-four consecutive hours. The record shall be certified on 1794
a monthly basis by an individual who is employed by the school 1795
and holds a valid license issued by the state board of education 1796
pursuant to sections 3319.22 to 3319.31 of the Revised Code. The 1797
record shall then be submitted each month as a report to the 1798
department of education, in the form and manner prescribed by 1799
the department. Upon receipt, the department shall make each 1800
report available on its web site, to the extent permitted under 1801
section 3319.321 of the Revised Code and the "Family Educational 1802
Rights and Privacy Act of 1974," 88 Stat. 571, 20 U.S.C. 1232g, 1803
as amended. 1804

(D) If a student enrolled in an internet- or computer- 1805
based community school not sponsored by a school district fails 1806
to participate in learning opportunities for ten consecutive 1807
days following the date the student begins instruction for the 1808
school year but prior to completing the student's academic 1809
program for that school year, the school shall notify the 1810
department, the student's parent, guardian, or custodian, and 1811
the student's resident school district of the student's failure 1812
to participate in those learning opportunities. 1813

(E) As used in this section, a student's "resident school 1814
district" is the school district in which the student is 1815
entitled to attend school under section 3313.64 or 3313.65 of 1816
the Revised Code and from which district the payments to the 1817
community school for the student are deducted under section 1818
3314.08 of the Revised Code. 1819

Sec. 3314.271. (A) Each internet- or computer-based 1820
community school shall offer a student orientation course and 1821
shall notify each student who enrolls in that school of that 1822

student's opportunity to participate in the student orientation 1823
course. 1824

(B) The department of education shall provide guidance to 1825
internet- or computer-based community schools for developing and 1826
delivering the orientation course. 1827

(C) Each internet- or computer-based community school may, 1828
at the time of a particular student's enrollment in that school, 1829
ask the student's parent or guardian to estimate the length of 1830
time the student will attend the school. Any information 1831
collected pursuant to this division shall be included in an 1832
aggregated format in the school's annual report required by 1833
division (A) (11) (g) of section 3314.03 of the Revised Code. 1834

(D) (1) Each internet- or computer-based community school, 1835
on a periodic basis throughout each school year, shall 1836
communicate with each student's parent, guardian, or custodian 1837
regarding the performance and progress of that student. Each 1838
internet- or computer-based community school also shall provide 1839
opportunities for parent-teacher conferences, shall document the 1840
school's requests for such conferences, and may permit students 1841
to participate in the conferences. ~~Parent-teacher~~ 1842

(2) In addition to the conferences described in division 1843
(D) (1) of this section, in the case of an internet- or computer- 1844
based community school not sponsored by a school district, if 1845
the academic performance of a student declines while the student 1846
is enrolled in the school, the student's parents, the student's 1847
teachers, and the principal or lead teacher of the community 1848
school shall confer to evaluate the student's continued 1849
enrollment in the school. 1850

Parent-teacher conferences conducted pursuant to division 1851

(D) (1) or (2) of this section may be conducted through 1852
electronic means. 1853

Sec. 3314.52. If the auditor of state issues a finding for 1854
recovery pursuant to an audit of a community school conducted in 1855
accordance with section 117.10 of the Revised Code, the 1856
department of education shall ensure that any public moneys 1857
returned to the state as a result of that finding for recovery 1858
are distributed as follows: 1859

(A) If the finding for recovery resulted from an audit of 1860
the enrollment records of the school, the funds shall be 1861
credited to the state education aid of the school district or 1862
districts from which the funding was deducted under section 1863
3314.08 of the Revised Code in an amount equal to the amount 1864
that was deducted. 1865

(B) If the finding for recovery resulted from an audit 1866
that is not described in division (A) of this section, the funds 1867
shall be redistributed to the school districts in which the 1868
students who were enrolled in the school at the time the finding 1869
for recovery is issued were entitled to attend school under 1870
section 3313.64 or 3313.65 of the Revised Code. The amount 1871
distributed to each school district under division (B) of this 1872
section shall be proportional to the district's share of the 1873
total enrollment in the school at the time the finding for 1874
recovery is issued. 1875

Section 2. That existing sections 3302.01, 3302.03, 1876
3302.41, 3314.03, 3314.032, 3314.08, 3314.23, 3314.27, and 1877
3314.271 of the Revised Code are hereby repealed. 1878

Section 3. (A) The E-School Funding Commission is hereby 1879
created to study the actual costs required to operate an 1880

internet- or computer-based community school as defined in 1881
section 3314.02 of the Revised Code. Not later than December 31, 1882
2017, the Commission shall determine a rational methodology for 1883
calculating the costs of operating an Internet- or computer- 1884
based community school. The Commission shall submit a report of 1885
its recommendations to the General Assembly in accordance with 1886
section 101.68 of the Revised Code. The Commission also shall 1887
submit a copy of the report to the Governor for use when 1888
considering school funding recommendations. Upon submission of 1889
the report, the Commission shall cease to exist. 1890

(B) The Commission shall consist of the following members: 1891

(1) The Governor, or the Governor's designee; 1892

(2) The Superintendent of Public Instruction, or the 1893
Superintendent's designee, who shall serve as the chairperson of 1894
the Commission; 1895

(3) The Chancellor of Higher Education, or the 1896
Chancellor's designee; 1897

(4) Two teachers currently employed by an Internet- or 1898
computer-based community school in this state, one appointed by 1899
the President of the Senate and one appointed by the Minority 1900
Leader of the Senate; 1901

(5) The chief administrator of an Internet- or computer- 1902
based community school that is sponsored by the board of 1903
education of a school district and has received a grade of at 1904
least "C" for performance index score and overall value-added 1905
progress dimension, under divisions (B)(1)(b) and (e) of section 1906
3302.03 of the Revised Code, on the most recent report card 1907
issued under section 3302.03 of the Revised Code, appointed by 1908
the Speaker of the House of Representatives; 1909

(6) The chief administrator of an Internet- or computer- 1910
based community school that is not sponsored by the board of 1911
education of a school district and has received a grade of at 1912
least "C" for performance index score and overall value-added 1913
progress dimension, under divisions (B) (1) (b) and (e) of section 1914
3302.03 of the Revised Code, on the most recent report card 1915
issued under section 3302.03 of the Revised Code, appointed by 1916
the Minority Leader of the House of Representatives; 1917

(7) The parent of a student enrolled in an Internet- or 1918
computer-based community school, appointed by the President of 1919
the Senate; 1920

(8) A representative of the business community, appointed 1921
by the Minority Leader of the Senate; 1922

(9) A representative of the general public, appointed by 1923
the Speaker of the House of Representatives; 1924

(10) A representative of community school operators, 1925
appointed by the Minority Leader of the House of 1926
Representatives; 1927

(11) A representative of community school sponsors, 1928
appointed by the Speaker of the House of Representatives; 1929

(12) The fiscal officer of an Internet- or computer-based 1930
community school, appointed by the President of the Senate; 1931

(13) The chairpersons and ranking members of the standing 1932
committees of the House of Representatives and the Senate 1933
principally responsible for education policy; 1934

(14) A representative of an organization that serves as a 1935
bargaining representative for teachers in this state, appointed 1936
by the Minority Leader of the Senate; 1937

(15) A representative from an organization of school 1938
administrators or fiscal officials, appointed by the Minority 1939
Leader of the House of Representatives. 1940

Members of the Commission shall serve without 1941
compensation. The Department of Education shall provide 1942
administrative support for the Commission. 1943

Section 4. Section 3302.03 of the Revised Code is 1944
presented in this act as a composite of the section as amended 1945
by both Am. Sub. H.B. 2 and Am. Sub. H.B. 64 of the 131st 1946
General Assembly. The General Assembly, applying the principle 1947
stated in division (B) of section 1.52 of the Revised Code that 1948
amendments are to be harmonized if reasonably capable of 1949
simultaneous operation, finds that the composite is the 1950
resulting version of the section in effect prior to the 1951
effective date of the section as presented in this act. 1952