

In the
Supreme Court of Ohio

TOLEDO CITY SCHOOL DISTRICT	:	Case No. 2014-1769
BOARD OF EDUCATION, <i>et al.</i> ,	:	
	:	
Appellees,	:	On Appeal from the
	:	Franklin County Court of Appeals,
	:	Tenth Appellate District
v.	:	
	:	
STATE BOARD OF EDUCATION OF	:	Court of Appeals
OHIO, <i>et al.</i>	:	Case No. 14AP-93
	:	14AP-94
	:	14AP-95
Appellants.	:	

**BRIEF OF APPELLANTS THE OHIO DEPARTMENT OF EDUCATION,
STATE BOARD OF EDUCATION, AND DR. RICHARD ROSS**

NICHOLAS A. PITTNER (0023159)
JAMES J. HUGHES, III (0036754)
SUSAN B. GREENBERGER (0010154)
JENNIFER A. FLINT (0059587)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
614-227-2316
614-227-2390 fax
npittner@bricker.com

Counsel for Appellees
Toledo City School Dist. Bd. of Educ.,
Dayton City School Dist. Bd. of Educ.,
and Cleveland Metropolitan School Dist.
Bd. of Educ.

MICHAEL DEWINE (0009181)
Attorney General of Ohio

ERIC E. MURPHY* (0083284)
State Solicitor
**Counsel of Record*

MICHAEL J. HENDERSHOT (0081842)
Chief Deputy Solicitor

HANNAH C. WILSON (0093100)
MATTHEW R. CUSHING (0092674)
Deputy Solicitors

TODD R. MARTI (0019280)
Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
eric.murphy@ohioattorneygeneral.gov

Counsel for Appellants
The Ohio Department of Education, State
Board of Education, and Dr. Richard Ross

KEITH WILKOWSKI (0013044)
AMY M. NATYSHAK (0043941)
Marshall & Melhorn, LLC
Four Seagate, Eighth Floor
Toledo, Ohio 43604
419-249-7100
419-249-7151 fax
wilkowski@marshall-melhorn.com

Co-Counsel for Appellee
Toledo City School Dist. Bd. of Educ.

JYLLIAN R. GUERRIERO (0088714)
Dayton City School District
115 South Ludlow Street
Dayton, Ohio 45402
937-542-3007
937-542-3188
jrguerriero@dps.k12.oh.us

Co-Counsel for Appellee
Dayton City School Dist. Bd. of Educ.

WAYNE J. BELOCK (0013166)
Chief Legal Counsel
Cleveland Metropolitan School District
1380 East Sixth Street
Cleveland, Ohio 44114
216-574-8210
216-574-8108 fax
wayne.j.belock@cmsdnet.net

Co-Counsel for Appellee
Cleveland Metropolitan School Dist.
Bd. of Educ.

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS.....	3
A. During fiscal years 2005 to 2007, the General Assembly allocated its public-school funding to each school district based in part on the total number of students residing in that district, including the students enrolled in community schools.....	3
B. Some school districts overestimated their October Counts during fiscal year 2005, and the Department adjusted their funding to reflect more accurate headcounts.	5
C. The General Assembly subsequently amended the law to make clear that it had always authorized the Department to adjust the school districts’ October Counts.....	6
D. In 2011, notwithstanding the General Assembly’s stated intent, the Districts sued over the funding for fiscal years 2005 to 2007.	7
ARGUMENT	9

Appellants’ Proposition of Law:

<i>The General Assembly has constitutional authority to adjust local school funding retrospectively.....</i>	9
A. The Retroactivity Clause does not protect political subdivisions, like school districts, that are created by the State to carry out its governmental functions.	9
1. The established meaning of the phrase “retroactive laws” when the framers adopted the Ohio Constitution in 1851 shows that the Retroactivity Clause does not protect the State’s political subdivisions.	10
a. Courts interpret constitutional phrases with settled background meanings in accordance with those settled meanings.....	11
b. The established meaning of the phrase “retroactive laws” in 1851 excluded the State’s political subdivisions from its reach.	12
2. Debates during the constitutional convention of 1850-1851 show that the framers meant to incorporate the preexisting meaning of “retroactive laws.”	16

3.	The Ohio Constitution’s overarching structure reaffirms that the Retroactivity Clause does not protect school districts.	19
a.	The Home Rule Amendment shows that subdivisions have power apart from the State only because the Constitution says so explicitly.	19
b.	Article VI, §§ 2 and 3 commit to the General Assembly control over statewide education policy.	21
4.	Many cases have repeatedly instructed that a State’s subdivisions lack rights protected by state retroactivity clauses.	23
a.	This Court has issued many cases recognizing that the State’s subdivisions lack rights under the Retroactivity Clause.	23
b.	Modern out-of-state authorities confirm that subdivisions are not within the purview of state retroactivity clauses.	28
5.	The Tenth District mistakenly interpreted this Court’s cases when it held that the Retroactivity Clause applies to the State’s subdivisions.	31
B.	Even if this Court concludes that the Districts may assert a claim under the Retroactivity Clause, the Budget Provisions are not unconstitutionally retroactive.	35
1.	The Retroactivity Clause protects only <i>vested</i> or <i>accrued</i> substantive rights, e.g., those rights in which a party has a reasonable expectation of finality.	35
2.	The Districts lacked any reasonable expectations of finality in educational funding that had not been distributed to them.	39
a.	The Districts have no reasonable expectation of finality in any state educational funding that had not been distributed to them.	40
b.	The Districts had no reasonable expectation of finality because the Budget Provisions merely clarified the General Assembly’s intent about an ambiguous statutory question.	42
3.	The Tenth District’s contrary analysis relied on an untenable distinction.	43
	CONCLUSION.	45
	CERTIFICATE OF SERVICE	
	APPENDIX:	APPX PAGE
	Notice of Appeal, Oct. 10, 2014	1
	Judgment Entry, Tenth Appellate District, Aug. 28, 2014	5

Decision, Tenth Appellate District, Aug. 28, 2014.....	8
Decision and Entry, Franklin County Court of Common Pleas, Jan. 16, 2014	30
Ohio Const. art. II § 28	55
R.C. 3317.03(A) (2004).....	56
R.C. 3314.08(C)-(D) (2004)	71
R.C. 3317.022(A) (2004).....	87
Am. Sub. H.B. 119 (127th G.A.), 2007 Ohio Legis. Serv. Ann. No. 4 at L-832-3 and L-877 (codified at R.C. 3317.03(K))	99
Am. Sub. H.B. 1 (128th G.A.), § 265.60.70	117
Am. Sub. H.B. 153 (129th G.A.), § 267.50.60	121
Am. Sub. H.B. 59 (130th G.A.), § 263.410	126
H.B. 64 (131st G.A.), § 263.450(A)	131

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Ackison v. Anchor Packing Co.</i> , 120 Ohio St. 3d 228, 2008-Ohio-5243.....	38, 39, 43
<i>Am. Fin. Servs. Ass’n v. City of Cleveland</i> , 112 Ohio St. 3d 170, 2006-Ohio-6043.....	16
<i>Ariz. Christian Sch. Tuition Org. v. Winn</i> , 131 S. Ct. 1436 (2010).....	33, 34
<i>Avon Lake City Sch. Dist. v. Limbach</i> , 35 Ohio St. 3d 118 (1988)	26, 27, 33, 34
<i>Bd. of Educ. of the Cincinnati Sch. Dist. v. Hamilton Cnty. Bd. of Revision</i> , 91 Ohio St. 3d 308, 2001-Ohio-46.....	31, 32, 33, 35
<i>Bd. of Educ. v. McLandsborough</i> , 36 Ohio St. 227 (1880).....	25
<i>Bielat v. Bielat</i> , 87 Ohio St. 3d 350 (2000)	<i>passim</i>
<i>Billings v. Cleveland Ry. Co.</i> , 92 Ohio St. 478 (1915).....	20
<i>Brecht v. Abrahamson</i> , 507 U.S. 619 (1993).....	33
<i>Burgett v. Norris</i> , 25 Ohio St. 308 (1874).....	39
<i>Calder v. Bull</i> , 3 U.S. 386 (1798).....	11, 13
<i>Cincinnati Bd. of Educ. v. Volk</i> , 72 Ohio St. 469 (1905).....	22
<i>Cincinnati City Sch. Dist. Bd. of Educ. v. State Bd. of Educ.</i> , 176 Ohio App. 3d 157, 2008-Ohio-1434 (1st Dist.).....	<i>passim</i>
<i>Cincinnati Sch. Dist. Bd. of Educ. v. State Bd. of Educ.</i> , Ohio S. Ct. No. 2008-0919	6
<i>Cincinnati School Dist. Bd. of Educ. v. Conners</i> , 132 Ohio St. 3d 468, 2012-Ohio-2447.....	22

<i>City of Cleveland v. State</i> , 138 Ohio St. 3d 232, 2014-Ohio-86.....	20
<i>City of Cleveland v. Zangerle</i> , 127 Ohio St. 91 (1933).....	<i>passim</i>
<i>City of Garden City v. City of Boise</i> , 104 Idaho 512 (1983).....	29
<i>Cnty. Comm’rs of Hamilton Cnty. v. Rosche</i> , 50 Ohio St. 103 (1893).....	2, 31, 32, 35
<i>Collins v. Youngblood</i> , 497 U.S. 37 (1990).....	2, 11, 16
<i>Comptroller of Treasury of Md. v. Wynne</i> , 135 S. Ct. 1787 (2015).....	11
<i>Dayton City Sch. Dist. Bd. of Educ. v. State Bd. of Educ.</i> , No. 11-cv-014120 (Franklin Cnty. C.P. Jan. 16, 2014).....	8
<i>De Cordova v. City of Galveston</i> , 4 Tex. 470 (1849).....	13, 29
<i>Deacon v. City of Euless</i> , 405 S.W.2d 59 (Tex. 1966).....	29
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008).....	12
<i>The Edward</i> , 14 U.S. 261 (1816).....	33
<i>Gibson v. Meadow Gold Dairy</i> , 88 Ohio St. 3d 201 (2000)	34
<i>Governor v. Gridley</i> , 1 Miss. 328 (1829)	15
<i>Greater Heights Acad. v. Zelman</i> , 522 F.3d 678 (6th Cir. 2008)	26
<i>Greenaway’s Case</i> , 319 Mass. 121 (1946)	29
<i>Groch v. Gen. Motors Corp.</i> , 117 Ohio St. 3d 192, 2008-Ohio-546.....	37

<i>Haskins v. Bias</i> , 2 Ohio App. 3d 297 (6th Dist. 1981)	37
<i>Hill v. Higdon</i> , 5 Ohio St. 243 (1855).....	11, 12, 13
<i>Hunter v. City of Pittsburgh</i> , 207 U.S. 161 (1907).....	26
<i>Hurley v. State</i> , 6 Ohio 399 (1834).....	11
<i>Hyle v. Porter</i> , 117 Ohio St. 3d 165, 2008-Ohio-542.....	32
<i>Interurban Ry. & Terminal Co. v. Pub. Utils. Comm'n</i> , 98 Ohio St. 287 (1918).....	20
<i>Jelm v. Jelm</i> , 155 Ohio St. 226 (1951).....	30
<i>Kiser v. Coleman</i> , 28 Ohio St. 3d 259 (1986)	25
<i>Kumler v. Silsbee</i> , 38 Ohio St. 445 (1882).....	<i>passim</i>
<i>Landgraf v. USI Film Prods.</i> , 511 U.S. 244 (1994).....	27
<i>Longbottom v. Mercy Hosp. Clermont</i> , 137 Ohio St. 3d 103, 2013-Ohio-4068.....	32, 37, 43
<i>Maryland ex rel. Washington Cnty. v. Balt. & Ohio R.R. Co.</i> , 44 U.S. 534 (1845).....	14, 15
<i>Mentor Exempted Vill. Sch. Dist. Bd. of Educ. v. State Empl. Relations Bd.</i> , 76 Ohio App. 3d 465 (11th Dist. 1991)	26
<i>Merrill v. Sherburne</i> , 1 N.H. 199 (1818).....	<i>passim</i>
<i>Metro. Dev. & Hous. Agency v. S. Cent. Bell Tele. Co.</i> , 562 S.W.2d 438 (Tenn. 1977).....	29
<i>Miller v. Graham</i> , 17 Ohio St. 1 (1866).....	39

<i>Miller v. Kornis</i> , 107 Ohio St. 287 (1923).....	21
<i>N.Y. Life Ins. Co. v. Bd. of Comm’rs of Cuyahoga Cnty.</i> , 106 F. 123 (6th Cir. 1901)	26, 35
<i>Nationwide Mut. Ins. Co. v. Kidwell</i> , 117 Ohio App. 3d 633 (4th Dist. 1996)	38, 39, 42
<i>New Orleans v. Clark</i> , 95 U.S. 644 (1877).....	24, 29
<i>Osai v. A & D Furniture Co.</i> , 68 Ohio St. 2d 99 (1981)	25
<i>Perk v. City of Euclid</i> , 17 Ohio St. 2d 4 (1969).....	33
<i>Police Jury of Bossier v. Corp. of Shreveport</i> , 5 La. Ann. 661 (La. 1850).....	15
<i>Pratte v. Stewart</i> , 125 Ohio St. 3d 473, 2010-Ohio-1860.....	36, 43, 44
<i>Proprietors of Kennebec Purchase v. Laboree</i> , 2 Me. 275 (1823).....	13
<i>Richardson v. Doe</i> , 176 Ohio St. 370 (1964).....	11
<i>Ry. Labor Executives’ Ass’n v. Gibbons</i> , 455 U.S. 457 (1982).....	21
<i>Ryan v. Connor</i> , 28 Ohio St. 3d 406 (1986)	30
<i>Savannah R-III School District v. Public School Retirement System of Missouri</i> , 950 S.W.2d 854 (Mo. 1997)	30
<i>Scott v. Spearman</i> , 115 Ohio App. 3d 52 (5th Dist. 1996)	39
<i>Sloan v. State</i> , 1847 WL 2439 (Ind. May 1, 1847).....	15
<i>Smith v. Leis</i> , 106 Ohio St. 3d 309, 2005-Ohio-5125.....	19

<i>Soc’y for the Propagation of the Gospel v. Wheeler</i> , 22 F. Cas. 756 (C.C.D.N.H. 1814).....	13
<i>Spitzig v. State</i> , 119 Ohio St. 117 (1928).....	25
<i>State Bd. of Health v. City of Greenville</i> , 86 Ohio St. 1 (1912).....	19, 20
<i>State ex rel. Atty. Gen. v. Shearer</i> , 46 Ohio St. 275 (1889).....	22
<i>State ex rel. Bates v. Trs. of Richland Twp.</i> , 20 Ohio St. 362 (1870).....	24, 35
<i>State ex rel. Bunch v. Indus. Comm’n</i> , 62 Ohio St. 2d 423 (1980)	39, 43
<i>State ex rel. Cleveland Right to Life v. State Controlling Bd.</i> , 138 Ohio St. 3d 57, 2013-Ohio-5632.....	19
<i>State ex rel. Core v. Green</i> , 160 Ohio St. 175 (1953).....	19, 20
<i>State ex rel. Crotty v. Zangerle</i> , 133 Ohio St. 532 (1938).....	<i>passim</i>
<i>State ex rel. Dep’t of Mental Hygiene & Corr., Bur. of Support v. Eichenberg</i> , 2 Ohio App. 2d 274 (9th Dist. 1965)	2, 24, 28
<i>State ex rel. Durbin v. Smith</i> , 102 Ohio St. 591 (1921).....	11
<i>State ex rel. Giovanello v. Village of Lowellville</i> , 139 Ohio St. 219 (1942).....	20
<i>State ex rel. Jordan v. Indus. Comm’n</i> , 120 Ohio St. 3d 412, 2008-Ohio-6137.....	27, 37
<i>State ex rel. Kenton City Sch. Dist. v. State Bd. of Educ.</i> , 174 Ohio St. 257 (1963).....	<i>passim</i>
<i>State ex rel. Matz v. Brown</i> , 37 Ohio St. 3d 279 (1988)	36
<i>State ex rel. Meyer v. Cobb</i> , 467 S.W.2d 854 (Mo. 1971)	29

<i>State ex rel. Michaels v. Morse</i> , 165 Ohio St. 599 (1956).....	38, 41
<i>State ex rel. Ogelvie v. Cappeller</i> , 39 Ohio St. 207 (1883).....	24, 35
<i>State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Educ.</i> , 111 Ohio St. 3d 568, 2006-Ohio-5512.....	<i>passim</i>
<i>State ex rel. Outcalt v. Guckenberger</i> , 134 Ohio St. 457 (1938).....	31, 32, 35, 38
<i>State ex rel. Slaughter v. Indus. Comm'n</i> , 132 Ohio St. 537 (1937).....	36, 44
<i>State ex rel. Sweeney v. Donahue</i> , 12 Ohio St. 2d 84 (1967)	<i>passim</i>
<i>State ex rel. United Auto., Aerospace, & Agric. Implement Workers of Am. v. Bureau of Worker's Comp.</i> , 108 Ohio St. 3d 432, 2006-Ohio-1327.....	33
<i>State ex rel. Wirsch v. Spellmire</i> , 67 Ohio St. 77 (1902).....	22
<i>State v. Bd. of Educ. of City of Wooster</i> , 38 Ohio St. 3 (1882).....	25
<i>State v. Kuhner</i> , 107 Ohio St. 406 (1923).....	24
<i>State v. Powers</i> , 38 Ohio St. 54 (1882).....	21, 22
<i>State v. White</i> , 132 Ohio St. 3d 344, 2012-Ohio-2583.....	27, 35, 36, 44
<i>Steele, Hopkins & Meredith Co. v. Miller</i> , 92 Ohio St. 115 (1915).....	16
<i>Strock v. Pressnell</i> , 38 Ohio St. 3d 207 (1988)	37
<i>Sturm, Ruger & Co., Inc. v. City of Atlanta</i> , 253 Ga. App. 713 (2002)	29
<i>Town of E. Hartford v. Hartford Bridge Co.</i> , 51 U.S. 511 (1850).....	14, 19

<i>Town of Marietta v. Fearing</i> , 4 Ohio 427 (1831).....	15
<i>Town of Mt. Pleasant v. Beckwith</i> , 100 U.S. 514 (1879).....	19
<i>Town of Nottingham v. Harvey</i> , 120 N.H. 889 (1980).....	29
<i>Trustees of Dartmouth College v. Woodward</i> , 17 U.S. 518 (1819).....	14, 18
<i>United States v. Traficant</i> , 368 F.3d 646 (6th Cir. 2004)	22
<i>Van Fossen v. Babcock & Wilcox Co.</i> , 36 Ohio St. 3d 100 (1988)	35
<i>Weed v. Bd. of Revision of Franklin Cnty.</i> , 53 Ohio St. 2d 20 (1978)	22
<i>Wilson v. Kasich</i> , 134 Ohio St. 3d 221, 2012-Ohio-5367.....	11, 22
Statutes, Rules, and Constitutional Provisions	
Am. Sub. H.B. 1 (128th G.A.), § 265.60.70	7, 42
Am. Sub. H.B. 119 (127th G.A.), 2007 Ohio Legis. Serv. Ann. No. 4 at L-832-3 and L-877 (codified at R.C. 3317.03(K) (2008)).....	6, 42
Am. Sub. H.B. 153 (129th G.A.) § 267.50.60	7
Am. Sub. H.B. 59 (130th G.A.) § 263.410	7
H.B. 64 (131st G.A.) § 263.450(A)	7
Mo. Const. art. XIII, § 17 (1820).....	12
N.H. Const. pt. 1, art. 23 (1784)	12, 18
Ohio Const. art. I, § 1.....	22
Ohio Const. art. I § 2.....	28
Ohio Const. art. II, § 28	1, 10
Ohio Const. art. VI.....	<i>passim</i>

Ohio Const. art. VI, § 2.....	21
Ohio Const. art. VI, § 3.....	21, 23
Ohio Const. art. VIII, § 4.....	22
Ohio Const. art. VIII, § 5.....	22
Ohio Const. art. XIII, § 1.....	22
Ohio Const. art. XIII, § 6.....	12
Ohio Const. art. XV, § 10.....	20
Ohio Const. art. XVIII.....	19, 20
R.C. 3311.37.....	21
R.C. 3311.54.....	21
R.C. 3314.08(C)-(D) (2004).....	5
R.C. 3317.01 <i>et seq.</i>	21
R.C. 3317.03(A) (2004).....	4
R.C. 3317.022(A) (2004).....	4
Tenn. Const. art. 1, § 20 (1834).....	12
Tex. Const. art. 1, § 14 (1845).....	12
U.S. Const. art. I, § 10.....	14
Other Authorities	
1 J.V. Smith, <i>Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio</i> 278 (1851).....	<i>passim</i>
1 James Kent, <i>Commentaries on American Law</i> (4th ed. 1840).....	14, 18
2 J.V. Smith, <i>Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio</i> (1851).....	16, 17, 18
2 <i>Proceedings and Debates of the Constitutional Convention of the State of Ohio</i> (1913).....	23
3 Joseph Story, <i>Commentaries on the Constitution of the United States</i> § 1387 (1833).....	15

Community Research Partners, Ohio Student Mobility Research Project, <i>Statewide Overview</i> (Jan. 2013), available at http://tinyurl.com/pnmfeut	41
Community Research Partners, Ohio Student Mobility Research Project, <i>Student Nomads: Mobility in Ohio's Schools</i> (Nov. 2012), available at http://tinyurl.com/p9x8ouu	41
Legislative Office of Education Oversight, <i>Community Schools in Ohio: Implementation Issues and Impact on Ohio's Educational System</i> , Vol. 1 (2003).....	40, 41
Office of Governor John R. Kasich, <i>Achievement Everywhere, Plan</i> , available at http://tinyurl.com/nlwr7mq (last visited June 25, 2015).....	41
Ohio Legislative Serv. Comm'n, Digest of Enactments 2007, 127th General Assembly (2007-2008) (May 2008) (analysis of Am. Sub. H.B. 119).....	7, 42
<i>Ohio School Funding: Historic and Current Approaches</i> (2012), available at http://tinyurl.com/otp3r5d	41
Thomas M. Cooley, <i>A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union</i> (1868).....	16
1 William Blackstone, <i>Commentaries on the Laws of England</i> (1765).....	17

INTRODUCTION

The General Assembly’s state funding of local school districts has long turned in part on each district’s total number of students. *See, e.g., State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Educ.*, 111 Ohio St. 3d 568, 2006-Ohio-5512 ¶¶ 36-37. When allocating this funding for the 2005 to 2007 fiscal years, the Ohio Department of Education (“Department”) read state law as permitting it to depart from a district’s annual enrollment data based on what it viewed as more accurate numbers from a different source. Disagreeing, the Appellees (the Toledo City School District Board of Education, Dayton City School District Board of Education, and Cleveland Metropolitan School District Board of Education (“the Districts”)) say that the law required the Department to use a district’s annual data—whether or not it accurately counted district students. The General Assembly has now sided with the Department in this debate. It passed one law clarifying the Department’s departure authority, and others indicating that districts could not hold the Department liable for its departure decisions from 2005 to 2007. The Districts nevertheless challenge the Department’s decisions during those years, arguing that the laws relieving the Department of potential liability to school districts violate the Ohio Constitution’s ban on “retroactive laws” in Article II, § 28. Their claim fails for two reasons.

First, this case shows why the Court long ago held that the Retroactivity Clause “‘is designed to prevent retrospective legislation injuriously affecting *individuals*’”—not retrospective legislation affecting the State “‘or any of its *subordinate agencies*.’” *Kumler v. Silsbee*, 38 Ohio St. 445, 447 (1882) (citation omitted; emphases added). The Districts assert that they have a right against the State that trumps the General Assembly’s statewide education policy—even if the previous framework that they seek to enshrine into the Constitution *inaccurately* counted students. Such an inflexible rule governing state funding of school districts would only *hinder* the General Assembly’s duty to secure “‘a system of common schools’” that

is “‘thorough and efficient.’” *Ohio Congress*, 2006-Ohio-5512 ¶ 29 (citation omitted). Yet the General Assembly established Ohio’s boards of education to *facilitate* that statewide system; they are “‘mere instrumentalit[ies] of the state to accomplish its purpose in establishing and carrying forward a system of common schools throughout the state.’” *Id.* ¶ 47 (citation omitted).

Outside the educational setting, moreover, imagine what the Districts’ legal position means. A state agency that did not agree with the General Assembly’s policy choice to forgive private debts owed to the agency could sue the private debtors claiming that the legislation violated the Retroactivity Clause—as one agency attempted to do. *See State ex rel. Dep’t of Mental Hygiene & Corr., Bur. of Support v. Eichenberg*, 2 Ohio App. 2d 274, 275-76 (9th Dist. 1965) (“This law cannot be deemed to be a retroactive law for it does not injuriously affect a citizen or interfere with a citizen’s vested right.”). It is an odd reading of our Constitution that would give *state agencies* constitutional rights against the *private citizens* that they serve.

Unsurprisingly, therefore, many tools of constitutional interpretation show that state subdivisions lack retroactivity rights. In 1851, the word retroactive was a term of art that did not reach laws “unless they operate[d] on the interests of individuals or of *private* corporations.” *Merrill v. Sherburne*, 1 N.H. 199, 213 (1818) (emphasis in original). That is conclusive here because courts interpret such a term “with an established meaning at the time of the framing” in conformity with that meaning. *Collins v. Youngblood*, 497 U.S. 37, 41 (1990). Indeed, debates over the Retroactivity Clause show that the framers intended to incorporate this preexisting meaning. Further, when the Constitution has given subdivisions rights against the State, it has done so expressly (as with the Home Rule Amendment). Constitutional provisions on education, by contrast, give the State, not subdivisions, wide authority on the topic. Finally, while some of this Court’s cases have applied the Clause to subdivisions, *see, e.g., Cnty. Comm’rs of Hamilton*

Cnty. v. Rosche, 50 Ohio St. 103 (1893), those cases did so without *any* legal reasoning over whether subdivisions even have retroactivity rights as an initial matter. They should not be read as having resolved that threshold legal question *silently*. To do so would place the cases in conflict with other decisions from this Court that did *expressly* consider the question and came out the other way, *Silsbee*, 38 Ohio St. at 447, not to mention the weight of out-of-state authority.

Second, even if the Districts had some retroactivity rights, the laws at issue here were not unconstitutionally retroactive. The Clause does not impugn all backward-looking laws; it instead invalidates only laws that impair vested or accrued rights—e.g., rights over which a party has a reasonable expectation of finality. For example, contracts already written are protected; anticipated contracts are not. Judgments are protected; nascent causes of action are not. Here, the Districts had no such reasonable expectations. To begin with, a political subdivision can have a reasonable expectation of finality in, at most, *only* those state funds that have *already* been distributed to it. Yet the Department did not demand that the Districts repay any money when it found that the Districts’ total number of students had been tallied inaccurately; it merely reduced *future* grants that had not yet been distributed to the Districts. In addition, the Retroactivity Clause does not apply to laws that merely clarify pre-existing, ambiguous law. That is all the General Assembly did here when it both formally recognized that the Department had the authority to depart from a school district’s certified enrollment data, and then noted that the Department should not face any liability to school districts for doing so in prior years.

STATEMENT OF THE CASE AND FACTS

- A. During fiscal years 2005 to 2007, the General Assembly allocated its public-school funding to each school district based in part on the total number of students residing in that district, including the students enrolled in community schools.**

This appeal arises from the General Assembly’s school-funding system for fiscal years 2005 to 2007. During those years, the State allocated its public-school funding to each school

district based in part on the total number of students who were receiving, or entitled to receive, public educational services from the district. *See* Toledo Compl. ¶ 10 (Supp. S-6). The funding system required each district to certify to the Ohio Department of Education the total number of students *actually* receiving the district’s educational services. *See* R.C. 3317.03(A)(1) (2004) (attached at Appx. 58-68). The system also required each district to certify the total number of students *entitled* to attend school in the district but who received educational services elsewhere, including through community schools (charter schools). *See* R.C. 3317.03(A)(2) (2004); *see also* Toledo Compl. ¶ 12 (Supp. S-6). In early October, each district combined these numbers and sent the total to the Department. *See, e.g.,* Toledo Compl. ¶ 13 (Supp. S-6). This certified number of total students was called the average daily membership (“ADM”) and colloquially known as the “October Count.” *See, e.g., id.* After certain adjustments, the Department used this October Count to calculate each district’s funding allocation for the year. *See, e.g., id.* ¶¶ 10-11; *see also* R.C. 3317.022(A) (2004) (attached at Appx. 88-96). The Department paid out each district’s total fiscal-year funding in a series of installments over the course of the year.

Although community-school students were included in a district’s October Count, the Department did *not* use that count to determine each community school’s funding. *See* Toledo Compl. ¶ 17 (Supp. S-7); *Cincinnati City Sch. Dist. Bd. of Educ. v. State Bd. of Educ.*, 176 Ohio App. 3d 157, 2008-Ohio-1434 ¶ 5 (1st Dist.). Unlike districts, which submitted one headcount per year, community schools submitted to the Department a monthly enrollment report known as the Community School Average Daily Membership (“CSADM”). *See* Toledo Compl. ¶¶ 17, 30 (Supp. S-7, S-9); *see also Cincinnati City Sch. Dist.*, 2008-Ohio-1434 ¶ 6. The districts lacked control over this community-school reporting. Toledo Compl. ¶ 19 (Supp. S-7). Based on these reports, the Department deducted from each district’s total funding allocation a set amount for

each community-school student residing in the district, and paid that amount to the community schools. *See* R.C. 3314.08(C)-(D) (2004) (attached at Appx. 73-84); Toledo Compl. ¶ 18 (Supp. S-7); Dept.’s Answer to Toledo Compl. ¶ 18 (“Answer to Toledo Compl.”) (Supp. S-19).

B. Some school districts overestimated their October Counts during fiscal year 2005, and the Department adjusted their funding to reflect more accurate headcounts.

Midway through fiscal year 2005, the Department noticed that some districts’ October Counts estimated a higher number of community-school students than were enrolled in the community schools as shown by those schools’ monthly reports. *Cincinnati City Sch. Dist.*, 2008-Ohio-1434 ¶ 8; Toledo Compl. ¶¶ 31-34 (Supp. S-9 to S-10). When choosing between this conflicting data, the Department believed that the community schools’ reports were more accurate. *See Cincinnati City Sch. Dist.*, 2008-Ohio-1434 ¶ 8. Community schools had no incentive to underestimate their enrollment because that would reduce their funding; the districts, by contrast, had no disincentive against erring on the side of higher community-school estimates. In addition, the community schools’ reports were based on *actual* headcounts, whereas the districts’ counts were based on *estimations* of community-school students. The Department thus adjusted the portion of the districts’ October Counts relating to community-school students using the community schools’ monthly numbers. *See* Answer to Toledo Compl. ¶ 32 (Supp. S-20). As relevant here, the Department determined that Toledo’s fiscal year 2005 October Count was too high by 561 students, Toledo Compl. ¶ 37 (Supp. S-10); Dayton’s was too high by 688 students, Dayton Compl. ¶ 37; and Cleveland’s was too high by 575 students, Cleveland Compl. ¶ 37.

Based on the adjusted count, the Department concluded that many districts had received funding for students that were not actually enrolled anywhere in the district; in other words, the districts had been overpaid. *See, e.g.*, Answer to Toledo Compl. ¶¶ 34-35, 38 (Supp. S-21). At that time, the affected districts had already received some fiscal year 2005 funding based on the

higher enrollment count. *See, e.g., id.* ¶ 35 (Supp. S-21). Rather than demand repayment of funds it had already paid out to districts, the Department reduced the remainder of the districts’ funding in fiscal years 2005, 2006, and 2007. *See, e.g., Toledo Compl.* ¶ 38 (Supp. S-10); *Answer to Toledo Compl.* ¶¶ 38-39 (Supp. S-21). The Department reduced Toledo’s distributions during those years by \$3,576,948, *Toledo Compl.* ¶ 39 (Supp. S-10); Dayton’s by \$2,548,120, *Dayton Compl.* ¶ 39; and Cleveland’s by \$1,857,311, *Cleveland Compl.* ¶ 39.

C. The General Assembly subsequently amended the law to make clear that it had always authorized the Department to adjust the school districts’ October Counts.

In 2007, the Cincinnati School District sued the Department over its fiscal year 2005 adjustment of Cincinnati’s funding. Cincinnati argued that Ohio law *required* the Department to calculate the city’s funding using only the district’s October Count rather the community schools’ reports—even if the October Count inaccurately calculated the district’s students. *See Cincinnati Sch. Dist.*, 2008-Ohio-1434 ¶ 2. The trial court agreed with Cincinnati, and the First District affirmed its decision. *See id.* ¶ 29. The Department appealed to this Court, which agreed to review the case. *Cincinnati Sch. Dist. Bd. of Educ. v. State Bd. of Educ.*, Ohio S. Ct. No. 2008-0919. Before briefing, however, the parties settled and dismissed the appeal. *See id.*

While the *Cincinnati* litigation was ongoing, the General Assembly amended the law to *unambiguously* state that it authorized the Department to vary from a district’s October Count when the Department believed that the count inaccurately conveyed the number of district students. *See Am. Sub. H.B. 119* (127th G.A.), 2007 Ohio Legis. Serv. Ann. No. 4 at L-832-3 and L-877 (codified at R.C. 3317.03(K) (2008)) (attached at Appx. 100-14). As the Legislative Service Commission detailed, this amendment clarified prior law: The General Assembly “formally” authorized the Department “to adjust a district’s [funding] formula . . . to correct

errors” in the district’s October Count. Ohio Legislative Serv. Comm’n, Digest of Enactments 2007, 127th General Assembly (2007-2008), at 22 (May 2008) (analysis of Am. Sub. H.B. 119).

In this respect, the First District’s subsequent holding in the *Cincinnati* litigation—that Ohio law required the Department to use *only* the district’s potentially inaccurate October Count—conflicted with the General Assembly’s intent that the Department had the authority to adjust that count. So the General Assembly next noted that it meant for its 2007 clarification to apply retroactively in uncodified § 265.60.70 of the 2009 biennial budget bill, Am. Sub. H.B. 1 (128th G.A.) (attached at Appx. 118-19). There, the General Assembly noted that the State bore no liability for the Department’s use of the community schools’ reports. Excluding cases that had gone to final judgment or been settled, this law stated that “a school district for which the [October Count] for fiscal year 2005 . . . was reduced based on enrollment reports for community schools” did not “have a legal claim for reimbursement . . . and the state shall not have liability for reimbursement of the amount of such reduction.” *Id.* When determining the amount of funds that it should appropriate to school districts in the next three budget bills, the General Assembly relied on this same clarification (collectively, “the Budget Provisions”). *See* Am. Sub. H.B. 153 (129th G.A.) § 267.50.60 (attached at Appx. 122-23); Am. Sub. H.B. 59 (130th G.A.) § 263.410 (attached at Appx. 127-28); H.B. 64 (131st G.A.) § 263.450(A) (attached at Appx. 132).

D. In 2011, notwithstanding the General Assembly’s stated intent, the Districts sued over the funding for fiscal years 2005 to 2007.

Despite the General Assembly’s clarifications that the Department should face no liability for departing from a district’s October Count, the Cleveland, Dayton, and Toledo School Districts sued the Department in 2011. They each sought a writ of mandamus (or declaratory judgment) ordering the Department, among other things, to pay their respective funds for fiscal years 2005 to 2007 using only the Districts’ October Counts, without adjusting the counts based

on community-school data. *See, e.g.*, Toledo Compl. ¶¶ 48-66 (Supp. S-12 to S-15). They also sought equitable restitution for funds that the Department allegedly wrongfully withheld. *See, e.g., id.* ¶¶ 67-69 (Supp. S-15). Parents in the Districts joined the suits, but did not allege separate claims of their own. *See, e.g., id.* ¶¶ 3-4 (Supp. S-4).

The Department moved for judgment on the pleadings on two grounds: (1) that the Budget Provisions barred the Districts' claims and insulated the State from liability, and (2) that the parent-plaintiffs lacked standing. *See Dayton City Sch. Dist. Bd. of Educ. v. State Bd. of Educ.*, No. 11-cv-014120, at 5-6 (Franklin Cnty. C.P. Jan. 16, 2014) (attached at Appx. 30-52). The trial court ruled that the Budget Provisions' elimination of potential state liability was unconstitutionally retroactive, but agreed that the parent-plaintiffs lacked standing. *See id.* at 12-16, 23. It certified the judgment for appeal, finding no reason for delay. *Id.* at 23.

The Department appealed the trial court's ruling on the Retroactivity Clause, and the parent-plaintiffs cross-appealed their dismissal for lack of standing. The Tenth District affirmed the judgment as to both the Department and the parent-plaintiffs. *See Toledo City Sch. Dist. Bd. of Educ. v. State Bd. of Educ.*, 18 N.E.3d 505, 2014-Ohio-3741 (10th Dist.) (attached at Appx. 9-29) (hereinafter "App. Op."). The court of appeals initially *rejected* the Districts' argument that the Budget Provisions impaired their vested rights. *Id.* ¶¶ 28-38. "[T]he fact that [the Department] had the statutory right to control all distributions of School Foundation payments to the Districts in a given fiscal year, including the authority to recoup overpayments out of future distributions, require[d the court] to conclude that the Districts' statutory right to School Foundation funds is conditional or contingent rather than absolute or vested." *Id.* ¶ 36.

The Tenth District next held, however, that the statutes were unconstitutionally retroactive because they impaired the Districts' "substantive right to School Foundation funds

that accrued under the statutory law in place for FY 2005 through FY 2007.” *Id.* ¶ 42. It did so both by relying on a decision that never mentions the Retroactivity Clause, and by brushing aside the Department’s argument that the Clause does not protect the State’s subdivisions. *Id.* ¶¶ 40-43 (citing *State ex rel. Kenton City Sch. Dist. v. State Bd. of Educ.*, 174 Ohio St. 257 (1963)).

As to the parent-plaintiffs, the Tenth District agreed that they lacked standing. *Id.* ¶ 59.

The Department appealed the Tenth District’s Retroactivity Clause holding, and the parent-plaintiffs cross-appealed the standing decision. This Court granted review of the Department’s appeal, but denied the parent-plaintiffs’ cross-appeal. *04/29/15 Case Announcements*, 142 Ohio St. 3d 1447, 2015-Ohio-1591.

ARGUMENT

Appellants’ Proposition of Law:

The General Assembly has constitutional authority to adjust local school funding retrospectively.

For two reasons, the Court should reverse the Tenth District’s holding that the General Assembly’s Budget Provisions violated the Retroactivity Clause. For one thing, school districts, as state agents, lack rights under the Retroactivity Clause. *See* Part A. For another, school districts have no reasonable expectation of finality in any state funds that might flow to them until those funds enter their coffers, especially where, as here, the relevant law was ambiguous at the relevant time. So the Districts cannot rely on the Retroactivity Clause to challenge the Department’s funding decisions even if the Clause conferred rights on districts. *See* Part B.

A. The Retroactivity Clause does not protect political subdivisions, like school districts, that are created by the State to carry out its governmental functions.

The Districts cannot complain that the Budget Provisions violate the Retroactivity Clause because that Clause protects private parties, not arms of the State. Many factors support that conclusion. *First*, the settled meaning of “retroactive laws” when the framers adopted the 1851

Constitution did not reach laws affecting government entities. *Second*, the framers’ debates over the Retroactivity Clause during the 1850-1851 constitutional convention make clear that they intended to incorporate this settled meaning. *Third*, the Ohio Constitution’s structure reinforces that the phrase “retroactive laws” does not reach the State’s political arms. *Fourth*, many of this Court’s post-ratification cases (consistent with the weight of out-of-state authority) hold that the Clause does not prohibit retroactive laws negatively affecting state subdivisions. *Fifth*, the Tenth District’s contrary decision wrongly rested on cases that did not squarely address this issue.

1. The established meaning of the phrase “retroactive laws” when the framers adopted the Ohio Constitution in 1851 shows that the Retroactivity Clause does not protect the State’s political subdivisions.

The Retroactivity Clause provides in full: “The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.” Ohio Const. art. II, § 28 (attached at Appx. 55). While the phrase “retroactive laws,” if read literally, could prohibit *all* laws purporting to apply to past events, the provision could not reasonably be defined in that extravagant fashion. *Bielat v. Bielat*, 87 Ohio St. 3d 350, 353 (2000) (noting that “there is a crucial distinction between statutes that merely apply retroactively (or ‘retrospectively’) and those that do so in a manner that offends our Constitution”). That is because the phrase “retroactive laws”—when incorporated into the Constitution—was a term of art with an established legal meaning. The phrase should be read in a manner that is consistent with that settled meaning.

a. Courts interpret constitutional phrases with settled background meanings in accordance with those settled meanings.

It is a well-established rule of constitutional interpretation that courts should interpret “a term of art with an established meaning at the time of the framing of the Constitution” in conformity with that established meaning. *Collins v. Youngblood*, 497 U.S. 37, 41 (1990). Various pre-ratification sources can illustrate this pre-ratification meaning.

The Constitution, for example, might incorporate a term of art at *common law*. When it does, courts generally interpret the phrase to retain its common-law scope. *See Richardson v. Doe*, 176 Ohio St. 370, 372-73 (1964) (noting that “where a statute uses a word which has a definite meaning at common law, it will be presumed to be used in that sense and not in the loose popular sense”); *Wilson v. Kasich*, 134 Ohio St. 3d 221, 2012-Ohio-5367 ¶ 26 (noting that the Court “appl[ies] the same rules of construction that [it] appl[ies] in construing statutes to interpret the meaning of constitutional provisions”). This Court, for example, has noted that the Ohio Constitution’s double-jeopardy prohibition “is nothing more than the recognition of the common law principle on that subject.” *Hurley v. State*, 6 Ohio 399, 402 (1834). Likewise, while “the Latin phrase ‘*ex post facto*’ literally encompasses any law passed ‘after the fact,’” the U.S. Supreme Court has held that “the constitutional prohibition on *ex post facto* laws applies only to penal statutes” because its common-law meaning was limited to the criminal context. *Collins*, 497 U.S. at 41-42 (discussing *Calder v. Bull*, 3 U.S. 386 (1798)).

Relatedly, the Constitution might incorporate a phrase previously used in other *state constitutions or laws*. When it does, courts again presume that the framers intended to incorporate the scope of these preexisting enactments. *State ex rel. Durbin v. Smith*, 102 Ohio St. 591, 599 (1921) (per curiam); *Hill v. Higdon*, 5 Ohio St. 243, 249 (1855); *cf. Comptroller of Treasury of Md. v. Wynne*, 135 S. Ct. 1787, 1812-13 (2015) (Thomas, J., dissenting) (citing cases

for the proposition that “we have looked to [pre-ratification] founding-era state laws to guide our understanding of the Constitution’s meaning”). This Court, for example, interpreted the phrase “assessment” in Article XIII, § 6 in the same manner that it was interpreted by the highest court of New York, because the framers borrowed the provision from New York’s constitution. *See Hill*, 5 Ohio St. at 247-49. And when the U.S. Supreme Court held that the Second Amendment adopted an individual right to bear arms, it relied on preexisting state provisions that had been interpreted in the same way. *District of Columbia v. Heller*, 554 U.S. 570, 577 (2008).

b. The established meaning of the phrase “retroactive laws” in 1851 excluded the State’s political subdivisions from its reach.

This canon of constitutional interpretation applies to the phrase “retroactive laws” in Ohio’s Retroactivity Clause. Specific cases and general principles that both predate the Retroactivity Clause prove that the Clause does not protect the State’s political subdivisions.

Specific Cases. Before 1851, four States had adopted clauses prohibiting the enactment of retroactive or retrospective civil laws. *See* 1 J.V. Smith, *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio* 278 (1851) (“*Debates and Proceedings* Vol. 1”); N.H. Const. pt. 1, art. 23 (1784); Mo. Const. art. XIII, § 17 (1820); Tenn. Const. art. 1, § 20 (1834); Tex. Const. art. 1, § 14 (1845). By 1851, supreme courts in two of these States had *already* interpreted their clauses not to reach state subdivisions. In *Merrill v. Sherburne*, 1 N.H. 199 (1818), the New Hampshire Supreme Court, in the course of striking down a retroactive law affecting private parties, “wish[ed] it to be distinctly understood . . . that acts of the legislature are not within the [State’s retroactivity clause], unless they operate on the interests of individuals or of *private* corporations.” *Id.* at 213 (emphasis in original). The Supreme Court of Texas later adopted this same limit, noting that *Merrill* “illustrate[d] the intention of [Texas’s] convention in” drafting Texas’s retroactivity

clause. *De Cordova v. City of Galveston*, 4 Tex. 470, 479 (1849). These specific cases illustrate that the words “retroactive” or “retrospective” were not defined to reach the State’s political arms in 1851. *Cf. Hill*, 5 Ohio St. at 248-49 (looking to New York case law to inform Ohio law).

General Principles. The New Hampshire Supreme Court’s interpretation in *Merrill* followed from two general principles that were equally settled when the framers ratified the Retroactivity Clause. These principles, too, show that it does not protect state subdivisions.

Principle One: It was established before 1851 that a law had to take away a plaintiff’s *vested rights* to be a prohibited “retroactive law.” When interpreting New Hampshire’s retroactivity clause in 1814, for example, Justice Story defined a retroactive law as follows: “Upon principle, every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past, must be deemed retrospective.” *Soc’y for the Propagation of the Gospel v. Wheeler*, 22 F. Cas. 756, 767 (C.C.D.N.H. 1814). This definition—tying retroactive laws to statutes taking away the vested rights of a plaintiff (the “rights” language) or of a defendant (the “duty” or “obligation” language)—was settled. *See Calder*, 3 U.S. at 391 (Chase, J.) (noting that “[e]very law that takes away, or impairs, rights vested, agreeably to existing laws, is retrospective”); *De Cordova*, 4 Tex. at 479 (noting that “[l]aws are deemed retrospective and within the constitutional prohibition which by retrospective operation destroy or impair vested rights”); *Proprietors of Kennebec Purchase v. Laboree*, 2 Me. 275, 295 (1823) (finding law unconstitutional insofar as it applied retroactively “because such operation would impair and destroy vested rights”). As a treatise summarized the law in 1840, “[a] retrospective statute affecting and changing *vested rights*, is very generally considered, in

this country, as founded on unconstitutional principles, and consequently inoperative and void.”

1 James Kent, *Commentaries on American Law* 455 (4th ed. 1840) (emphasis added).

Principle Two: It was also established before 1851 that a State’s subdivisions (in contrast to private corporations) did *not* have vested rights against the State. That question most often arose in the context of claims that a State had violated constitutional provisions prohibiting the States from “impairing the obligation of contracts.” *See, e.g.*, U.S. Const. art. I, § 10. Dating to *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819), the U.S. Supreme Court interpreted the obligation-of-contracts clause as applying only to private corporations, not public entities, like municipalities or counties, that could have no vested rights against the State. *Id.* at 629 (“That the framers of the constitution *did not intend to restrain the states* in the regulation of their civil institutions, adopted for internal government, and that the instrument they have given us, is not to be so construed, may be admitted.” (emphasis added)).

Later cases crystallized this distinction between private corporations (which could have vested rights) and public corporations (which could not). *See Town of E. Hartford v. Hartford Bridge Co.*, 51 U.S. 511, 534-35 (1850); *Maryland ex rel. Washington Cnty. v. Balt. & Ohio R.R. Co.*, 44 U.S. 534, 550 (1845). In *Maryland*, for example, the State and a railroad entered into a contract requiring the railroad to pay a county one million dollars if the railroad breached the contract. 44 U.S. at 536. When the State later passed a law repealing this penalty, the county sued the railroad to enforce the contract on the ground that the later legislation was invalid. *Id.* The U.S. Supreme Court rejected the claim, noting that “[t]he several counties are nothing more than certain portions of territory into which the state is divided for the more convenient exercise of the powers of government.” *Id.* at 550.

Maryland was no outlier. Countless examples exist. In one, a State gave a city control over a ferry crossing on the expectation that the city would use the proceeds to improve its infrastructure. See *Police Jury of Bossier v. Corp. of Shreveport*, 5 La. Ann. 661, 661 (La. 1850). When the State passed a new law divesting the city of complete control, the city argued that the law violated the obligation-of-contracts clause (and impaired its vested rights) because the city had spent substantial money to improve its infrastructure on the expectation that it would receive the ferry-crossing revenue. See *id.* at 664. The Louisiana Supreme Court disagreed. It noted that obligation-of-contract and vested-rights “questions grow entirely out of the violation of contracts with, or the vested rights of[,] *individuals or private corporations* established for individual profit.” *Id.* at 665 (emphasis added). A political subdivision, by contrast, is “created by the Legislature and is entirely subject to Legislative will.” *Id.*; see, e.g., *Sloan v. State*, 1847 WL 2439, *2 (Ind. May 1, 1847) (“The special powers conferred upon [public or municipal corporations] are not vested rights as against the State, but being wholly political exist only during the will of the general Legislature.”); *Governor v. Gridley*, 1 Miss. 328, 328-29 (1829) (rejecting constitutional argument that a public entity had a “vested right, which the legislature can, in no respect, destroy, delay or impair”); cf. *Town of Marietta v. Fearing*, 4 Ohio 427, 432 (1831) (identifying “well-settled distinction between private and public corporations”).

Treatises around the time of the Retroactivity Clause’s ratification make the same point. Joseph Story’s commentaries noted that “[i]f a charter be a mere grant of political power, if it create a civil institution, to be employed in the administration of the government, or, if the funds be public property alone, and the government alone be interested in the management of them, the legislative power over such charter is not restrained by the constitution, but remains unlimited.”³ Joseph Story, *Commentaries on the Constitution of the United States* § 1387 at 260-61 (1833).

Another noted that “[t]he rights and franchises of [a public] corporation, being granted for the purposes of the government, can never become such vested rights as against the State that they cannot be taken away.” Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 192-93 (1868).

In sum, by 1851, it was settled both (1) that a law was “retroactive” only if it took away vested rights, and (2) that the State’s subdivisions had no vested rights against the State. Accordingly, the New Hampshire Supreme Court’s conclusion in *Merrill*—that a retroactivity clause protects private parties, not government entities—followed from the general meaning of the phrase “retroactive laws.” And because this meaning existed in 1851, the Court should interpret the Retroactivity Clause consistent with that meaning. *See Collins*, 497 U.S. at 41.

2. Debates during the constitutional convention of 1850-1851 show that the framers meant to incorporate the preexisting meaning of “retroactive laws.”

The convention debates to ratify the 1851 Constitution reinforce that the framers intended “retroactive laws” to incorporate its established meaning. Two aspects of those debates (their focus on private parties and their reliance on preexisting authorities) confirm this conclusion. That has significance because “[i]f the proceedings of the convention clearly indicate the purpose of a particular provision great weight may properly be attached to them.” *Steele, Hopkins & Meredith Co. v. Miller*, 92 Ohio St. 115, 122 (1915) (citation omitted); *Am. Fin. Servs. Ass’n v. City of Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043 ¶ 26.

Private Parties. As far as the Department is aware, the framers did not contemplate that the Retroactivity Clause would reach political subdivisions. The debates instead focused on protecting *private* parties from the uncertainty created by retroactive laws. *See Debates and Proceedings* Vol. 1 at 263-82; 2 J.V. Smith, *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio* 193, 240-41, 277, 589-93,

596-97 (1851) (“*Debates and Proceedings* Vol. 2”). One delegate, for example, urged adoption because “men’s rights should be settled by the law in force at the time they accrued, in order that men might know what their rights and liabilities are.” *Debates and Proceedings* Vol. 1 at 270. Another stated that “the idea of making a rule to punish the action of men, or to affect their rights and interests, already past and accrued, would be as bad as the practice of the Roman despot, when he wrote his laws in small characters, and stuck them up so high that the people could not read them.” *Debates and Proceedings* Vol. 2 at 591. It is safe to say that Caligula’s infamy springs from his failure to provide fair notice to Rome’s people—not Rome’s administrative agencies. 1 William Blackstone, *Commentaries on the Laws of England* 46 (1765) (noting that legislatures must not act “like Caligula, who . . . wrote his laws in a very small character, and hung them up upon high pillars, the more effectually to ensnare *the people*” (emphasis added)).

The debates concerning when the General Assembly may pass “curative” laws likewise centered on private parties. *See Debates and Proceedings* Vol. 1 at 264-74; *Debates and Proceedings* Vol. 2 at 193, 590-92, 596-97. Some delegates wanted to allow the legislature to address predicaments that could be rescued only by retrospective legislation. *See, e.g., Debates and Proceedings* Vol. 1 at 265-66 (discussing deed defects). Even then, these framers expressed concern with the rights of *individuals*, not *political bodies*. *See id.* at 274 (“Instead of being curative laws, they are laws of peace and affording security to the rights of citizens.”); *Debates and Proceedings* Vol. 2 at 240 (“It is that power which may be used for the protection of private rights—for the purpose of curing those evils which sometimes arise in society, and which, if not cured, would work immense mischief and wrong.”). As far as the Department is aware, the rights of political subdivisions were not a part of this discussion.

Preexisting Authorities. The debates also show the framers' awareness of the established meaning of "retroactive" or "retrospective." One delegate who urged passage of the Retroactivity Clause specifically invoked the New Hampshire Supreme Court's *Merrill* decision:

[P]ermit me to say that the New Hampshire constitution contains a prohibition against retro-spective, or, as called here, retro-active laws. These two are equivalent [sic] terms. It leaves out the term *ex post facto* because the word retrospective limits the effect of legislation to the future; and precludes it from . . . making any law which . . . interferes with the rights of persons and property which are already vested. If gentlemen will look into the first volume of the New Hampshire reports, page 199, they will find an opinion of Mr. Justice Woodbury [in *Merrill*], in which he discusses the whole subject of retro-active legislation, and the effect of this term retrospective.

Debates and Proceedings Vol. 1 at 269. That a delegate directed the framers to the very case interpreting a similar retroactivity clause as limited to "the interests of individuals or of *private* corporations," *Merrill*, 1 N.H. at 213, provides strong evidence for the conclusion that those framers believed that Ohio's equivalent clause would be construed in the same fashion.

The framers, moreover, were aware both of the existing dichotomy between public and private corporations and of the requirement that a retroactive law must take away vested rights. Citing *Dartmouth College*, for example, one delegate suggested that "no man is bold enough to assert" that the charters of public corporations "may not be repealed by act of the Legislature." *Debates and Proceedings* Vol. 2 at 270; *see id.* (noting that "municipal corporations" "were always liable to repeal"). Another quoted at length from Kent's Commentaries, stating that a prohibited retrospective law is one that operates by "affecting and changing vested rights." *Id.* at 240 (reading from 1 Kent, *Commentaries on American Law* 455).

All told, then, Ohio's framers both invoked the vested rights of private parties when discussing the importance of a retroactivity clause and cited the preexisting authorities that had already noted that a State's subdivisions lack those vested rights.

3. The Ohio Constitution’s overarching structure reaffirms that the Retroactivity Clause does not protect school districts.

By both a negative implication and an affirmative grant, the Ohio Constitution’s structure also refutes the Districts’ retroactivity claim. *See Smith v. Leis*, 106 Ohio St. 3d 309, 2005-Ohio-5125 ¶ 59 (courts have duty to “‘give a construction to the Constitution as will make it consistent with itself, and will harmonize and give effect to all its various provisions’” (citation omitted)). First, when the Constitution has deviated from the starting point that state agents are subservient to the State, it has done so explicitly. Ohio Const. art. XVIII (Home Rule). The absence of any such text for school districts shows that they remain subject to state control. Second, the provisions of Article VI (Education) explicitly reiterate *state*, not *local*, power over school funding. What Article VI grants expressly, the Retroactivity Clause does not remove silently.

a. The Home Rule Amendment shows that subdivisions have power apart from the State only because the Constitution says so explicitly.

The default power of the State’s political subdivisions is zero. Generally, “[c]ounties, cities, and towns are municipal corporations created by the authority of the legislature, and they derive all their powers from the source of their creation.” *Town of Mt. Pleasant v. Beckwith*, 100 U.S. 514, 524 (1879). That default rule is expressed across a range of political subdivisions. *See, e.g., State Bd. of Health v. City of Greenville*, 86 Ohio St. 1, 24 (1912) (municipalities before 1912 amendments); *State ex rel. Core v. Green*, 160 Ohio St. 175, syl. ¶ 2 (1953) (school districts); *cf. State ex rel. Cleveland Right to Life v. State Controlling Bd.*, 138 Ohio St. 3d 57, 2013-Ohio-5632 ¶ 45 (O’Donnell, J., dissenting) (General Assembly can “abolish” or “regulate” Controlling Board). Any variation from the default rule must arise from the Constitution itself. “When [subdivisions] are wished to be in some respects not so subject [to legislative control], but to act exclusively, it should be so expressed in the constitutions of their states.” *Town of E. Hartford*, 51 U.S. at 536; *see Beckwith*, 100 U. S. at 524.

In this respect, the Ohio Constitution includes an express exception to the default rule in favor of municipalities, but no equivalent provision for school districts. That comparison shows that school districts have no rights against the State under the Retroactivity Clause. Before the Home Rule Amendment in Article XVIII, municipalities were, “at best[,] but a mere agency of the state” whose rights to control “local affairs rest[ed] wholly on the general grant of powers by the General Assembly of the state[, which retained the authority to] . . . extend, limit, or revoke th[ose] powers at will.” *City of Greenville*, 86 Ohio St. at 24. This municipal subservience to the General Assembly changed in 1912. A package of amendments gave them some authority that arose “from the Constitution,” not the legislature. *Interurban Ry. & Terminal Co. v. Pub. Utils. Comm’n*, 98 Ohio St. 287, 298 (1918). These amendments “add[ed] to the governmental status of the municipalities.” *Billings v. Cleveland Ry. Co.*, 92 Ohio St. 478, 483 (1915) (emphasis added). The “people made a new distribution of governmental power” whose source was “the Constitution” and was thus “not affected by the general statutes of the state.” *Id.*

School districts, by contrast, have no similar authority. *Cf. State ex rel. Giovanello v. Village of Lowellville*, 139 Ohio St. 219, 222 (1942) (“Since villages are not mentioned in [Article XV, § 10], the maxim *expressio unius est exclusio alterius* applies[, and] villages are excluded from the operation of the constitutional provision.”). This difference between an explicit source of power and its absence matters. It explains why school districts may be modified at the General Assembly’s behest, *Green*, 160 Ohio St. at 175, but why municipalities can at times object to state laws that “limit” their authority, *see City of Cleveland v. State*, 138 Ohio St. 3d 232, 2014-Ohio-86, syl. ¶ 2. School districts, like municipalities before 1912, remain creatures of the State, and lack rights under the Retroactivity Clause to object to state laws that affect their operations or funding. To hold otherwise would ridicule the efforts of those

who fought for the 1912 amendments for municipalities. Why suffer the toil and costs of the amendment process to elevate school districts' status when a simple lawsuit would have done the trick? *See Ry. Labor Executives' Ass'n v. Gibbons*, 455 U.S. 457, 473 (1982) (rejecting an argument because the outcome could be accomplished only by amending the Constitution). Municipalities may have constitutional claims against the State because the Constitution says so; school districts have no such claims because the Constitution is silent.

b. Article VI, §§ 2 and 3 commit to the General Assembly control over statewide education policy.

The flipside of constitutional silence about school-district status is constitutional bluntness about state educational power. Ohio Const. art. VI, § 2 (Thorough and Efficient Clause); *id.* § 3 (School System Clause). Article VI charges the General Assembly to establish a “thorough and efficient” “public school system” “throughout the State.” *Id.* §§ 2, 3. Under it, the General Assembly has set up a “statewide” “public school system,” not discrete, separate school districts. *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Educ.*, 111 Ohio St. 3d 568, 2006-Ohio-5512 ¶¶ 29, 68; *Miller v. Korns*, 107 Ohio St. 287, syl. ¶ 2 (1923).

Article VI entrusts the General Assembly “with making complicated decisions about our state’s educational policy.” *Ohio Congress*, 2006-Ohio-5512 ¶ 73. To fulfill its responsibility, the General Assembly has set forth extensive rules governing school districts in all matters from their creation, *see, e.g.*, R.C. 3311.37, to their funding, *see, e.g.*, R.C. 3317.01 *et seq.*, to their dissolution, *see, e.g.*, R.C. 3311.54. And this statewide responsibility means that the General Assembly “has the exclusive authority to spend tax revenues to further a statewide system of schools compatible with the Constitution.” *Ohio Congress*, 2006-Ohio-5512 ¶ 39. In short, Article VI grants the General Assembly “wide discretion.” *Id.* ¶ 33; *State v. Powers*, 38 Ohio St. 54, 64 (1882) (“efficiency . . . is a consideration alone for the general assembly”), *overruled by*

State ex rel. Atty. Gen. v. Shearer, 46 Ohio St. 275, syl. ¶ 3 (1889), *in turn overruled by State ex rel. Wirsch v. Spellmire*, 67 Ohio St. 77, syl. ¶ 2 (1902) (“reaffirm[ing]” Powers).

In contrast to the General Assembly’s broad discretion, the school districts take a subservient role. “A board of education is ‘a mere instrumentality of the state to accomplish its purpose in establishing and carrying forward a system of common schools throughout the state.’” *Ohio Congress*, 2006-Ohio-5512 ¶ 47 (quoting *Cincinnati Bd. of Educ. v. Volk*, 72 Ohio St. 469, 485 (1905)). They “are creations of statute, and their authority is derived from and strictly limited to powers that are expressly granted by statute or clearly implied therefrom.” *Cincinnati School Dist. Bd. of Educ. v. Conners*, 132 Ohio St. 3d 468, 2012-Ohio-2447 ¶ 9.

This structure of broad grants to the General Assembly on educational matters puts to rest the idea that the Constitution *also* silently limits its power over school districts in a clause designed to protect private parties. One part of a constitution informs the meaning of others. *See, e.g., Weed v. Bd. of Revision of Franklin Cnty.*, 53 Ohio St. 2d 20, 20 (1978) (per curiam) (art. I, § 1 not “paramount” over other sections); *United States v. Traficant*, 368 F.3d 646, 651-52 (6th Cir. 2004). Reading parts of the Constitution together includes recognizing that some provisions vest “considerable discretion” in certain actors, rather than others. *See Wilson*, 2012-Ohio-5367 ¶ 30. This Court’s cases have already read other constitutional provisions in light of the broad power granted to the State in Article VI. Article VI, for example, makes clear that public schools serve a public purpose. So Article VIII, § 4’s Lending-Of-Credit Clause does not restrict school funding. *See Ohio Congress*, 2006-Ohio-5512 ¶¶ 67-68. Article VI also teaches that school districts are not “corporations.” Thus, neither the Loan-Guarantee Clause of Article VIII, § 5, nor the Corporations Clause of Article XIII, § 1 applies to school districts. *See id.* ¶ 72; *Powers*, 38 Ohio St. at 62 (school districts are not “corporations” under art. XIII, § 1; rather

they are “mere subdivisions of the state for political purposes”). So too with the Retroactivity Clause. Article VI directs the General Assembly to set statewide education-funding policy; the Retroactivity Clause should not be read to cut into that power on behalf of the school districts.

One final point. The structural lessons of the Home Rule Amendment and of Article VI reinforce each other, a fact that was understood during the 1912 home-rule debates. The framers added Article VI, § 3 to rebut any suggestion that the municipalities’ new home-rule power would undercut the General Assembly’s unquestioned preeminence over the public-school system. Section 3 “establish[ed] definitely that the state shall for all time . . . have complete control over the educational system, and that no city . . . can withdraw itself, under the guise of a charter, from the public educational system of the state.” *2 Proceedings and Debates of the Constitutional Convention of the State of Ohio* 1500 (1913).

4. Many cases have repeatedly instructed that a State’s subdivisions lack rights protected by state retroactivity clauses.

Both in-state and out-of-state decisions have repeatedly recognized that a State’s subdivisions lack rights against the State under constitutional retroactivity clauses.

a. This Court has issued many cases recognizing that the State’s subdivisions lack rights under the Retroactivity Clause.

The Court’s precedents—both cases specifically interpreting the Retroactivity Clause and cases generally discussing the relationship between the State and its subdivisions—confirm that school districts do not have vested rights against the State that can be protected by the Clause.

Retroactivity Cases. The Court has held that the Retroactivity Clause applies to “retrospective legislation injuriously affecting *individuals*,” not legislation affecting the State “or any of its *subordinate agencies*.” *Kumler v. Silsbee*, 38 Ohio St. 445, 447 (1882) (citation omitted; emphases added); *see also, e.g., State ex rel. Sweeney v. Donahue*, 12 Ohio St. 2d 84, 87 (1967) (noting that “a statute which impairs only the rights of the state may constitutionally be

given retroactive effect”); *State ex rel. Bates v. Trs. of Richland Twp.*, 20 Ohio St. 362, syl. ¶¶ 3-4 (1870) (finding that acts were “not retroactive laws” because “counties, townships, and cities are public agencies in the system of the State government; and, in the class of laws above referred to, they are employed by the legislature as mere instruments to raise a tax for a public object”); *State ex rel. Dep’t of Mental Hygiene & Corr., Bur. of Support v. Eichenberg*, 2 Ohio App. 2d 274, 276 (9th Dist. 1965) (“This law cannot be deemed to be a retroactive law for it does not injuriously affect a citizen or interfere with a citizen’s vested right.”).

Silsbee, for example, addressed an invalid contract between the City of Cincinnati and a private individual to lay pipes in the city’s streets. When Cincinnati adopted the ordinance authorizing this contract, it lacked authority to do so. *See* 38 Ohio St. at 446. To remedy the city’s lack of authority, the General Assembly passed a law blessing previous contracts providing for the laying of pipe. *Id.* Unhappy with the deal that the city had struck, the city solicitor sought an injunction against the private contractor on the theory that the General Assembly’s decision to validate an invalid contract was retroactive. *Id.* This Court rejected that argument because the Retroactivity Clause protects private people, not state subdivisions: “[T]he constitutional inhibition does not apply to legislation recognizing or affirming the binding obligation of the state, or any of its subordinate agencies, with respect to past transactions. It is designed to prevent retrospective legislation injuriously affecting individuals, and thus protect vested rights from invasion.” *Id.* at 447 (quoting *New Orleans v. Clark*, 95 U.S. 644, 655 (1877)); *State ex rel. Ogilvie v. Cappeller*, 39 Ohio St. 207, 215 (1883) (same). If, by contrast, a *private* contractor had challenged the General Assembly’s retroactive approval of an invalid contract, it is unlikely the Court would have upheld the law. *Cf. State v. Kuhner*, 107 Ohio St.

406, 419-20 (1923) (holding that it would have been unconstitutionally retroactive to bind a private party to a contract that was invalid at the time the party entered it).

Similarly, in *Board of Education v. McLandsborough*, 36 Ohio St. 227 (1880), a statute was challenged because it retroactively relieved a public officer's sureties of their liability to a school district for certain stolen school-district funds that had been in the officer's possession. *Id.* at 227-28. The Court held that "[b]onds like this, where the deficit is of the same character as in this case, are prosecuted in the name of the state . . . , and the legislature undoubtedly has authority to release obligations which could only be thus prosecuted." *Id.* at 232; *State v. Bd. of Educ. of City of Wooster*, 38 Ohio St. 3, 6 (1882) (same). If, by contrast, a private party had challenged the General Assembly's retroactive elimination of the party's rights against a third party, it is again unlikely the Court would have found no retroactivity problem. *Cf. Kiser v. Coleman*, 28 Ohio St. 3d 259, syl., 262-63 (1986) (refusing to apply a statute retroactively that eliminated a party's rights under a private land contract).

As one more example, in *Spitzig v. State*, 119 Ohio St. 117 (1928), the Court rejected a retroactivity challenge to a law requiring a county to compensate a juror who had been injured in the county courthouse—notwithstanding that the county could face no liability at the time of the accident. *Id.* at 118, 123. If, by contrast, the county had been a private owner, the General Assembly could not have retroactively changed tort law to impose new duties on that private party. *Cf. Osai v. A & D Furniture Co.*, 68 Ohio St. 2d 99, 100 (1981) (per curiam) (noting that the Consumer Sales Practices Act's treble-damages provision could not apply retroactively).

In sum, this Court has repeatedly upheld the retroactive imposition of obligations on subdivisions against attacks brought on behalf of those subdivisions. "That such a statute is not obnoxious to the prohibition of retroactive laws by the constitution of Ohio has been so many

times held by the supreme court of the state, sometimes by necessary implication, and sometimes in express terms, that we can have no doubt of its being the settled rule in the state.” *N.Y. Life Ins. Co. v. Bd. of Comm’rs of Cuyahoga Cnty.*, 106 F. 123, 127 (6th Cir. 1901).

Government-Structure Cases. More broadly, the Court has long held that political subdivisions like school districts have limited constitutional protections as against their state creators. Relying on federal precedent, for example, the Court has held that a school district has no due-process or equal-protection rights under the federal or Ohio Constitutions. *See Avon Lake City Sch. Dist. v. Limbach*, 35 Ohio St. 3d 118, 122 (1988); *see also Mentor Exempted Vill. Sch. Dist. Bd. of Educ. v. State Empl. Relations Bd.*, 76 Ohio App. 3d 465, 469 (11th Dist. 1991) (holding that school districts have no First Amendment rights). In the process, the Court endorsed the view that subdivisions lack the same constitutional protections as citizens because they “‘are . . . created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them.’” *Avon Lake*, 35 Ohio St. 3d at 121 (quoting *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907)). To the extent their “rights” had been impaired by the State, the districts had no recourse in the Due Process or Equal Protection Clauses. *Id.* at 122 (“We are persuaded that a school district is a political subdivision created by the General Assembly and it may not assert any constitutional protections regarding due course of law or due process of law against the state, its creator.”); *Greater Heights Acad. v. Zelman*, 522 F.3d 678, 680 (6th Cir. 2008) (“It is well established that political subdivisions cannot sue the state of which they are part under the United States Constitution.”).

Avon Lake did call for a provision-by-provision approach for determining whether subdivisions could assert constitutional claims. 35 Ohio St. 3d at 122 (noting that “there may be occasions where a political subdivision may challenge the constitutionality of state legislation”).

But *Avon Lake*'s reasoning applies with full force to the Retroactivity Clause. Like the Equal Protection and Due Process Clauses, that Clause restricts government action to protect *individual* liberty. “The prohibition against retroactive laws . . . is a protection for the individual who is assured that he may rely upon the law as it is written and not later be subject to new obligations thereby.” *State v. White*, 132 Ohio St. 3d 344, 2012-Ohio-2583 ¶ 34 (citation omitted); *cf. Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994) (noting that a presumption against retroactivity exists because, “[i]n a free, dynamic society, creativity in both commercial and artistic endeavors is fostered by a rule of law that gives people confidence about the legal consequences of their actions”). The Retroactivity Clause’s touchstone—“a reasonable expectation of finality”—allows *private parties* to organize their affairs knowing that certain rights are settled and safe from later government interference. *White*, 2012-Ohio-2583 ¶ 34.

It would be formalistic, unworkable, and counterproductive to extend this individual-rights provision to state subdivisions. It would be formalistic because the General Assembly, given its complete control over education policy, need only draft laws in the “correct” fashion to avoid the alleged limits. Here, for example, rather than adopt the Budget Provision in 2009, the General Assembly could have used its Article VI power *prospectively* to reduce *future* payments to districts that had been overfunded. *Cf. State ex rel. Jordan v. Indus. Comm’n*, 120 Ohio St. 3d 412, 2008-Ohio-6137 ¶ 13 (holding that a private party has no vested right in the expectation of future benefits). The net result would be the same for the Districts—their receipt of state money from 2005 to 2009 would be identical. The difference is only in how the General Assembly accomplished that end. It makes little sense to interpret the Retroactivity Clause as trumpeting form over substance by encouraging litigation that nets school districts nothing.

It would be unworkable because the Districts have never explained why the argument that they have retroactivity rights as against the State would not extend to *every* state agent—including those at the state level. The Ohio Department of Taxation, for example, might assert retroactivity claims against the General Assembly’s mid-year corrections to its budget. *Cf. Sweeney*, 12 Ohio St. 2d at 84. Or the Ohio Department of Mental Health might assert retroactivity claims against the General Assembly’s decision to forgo compensation for the agency’s past services. *Cf. Eichenberg*, 2 Ohio App. 2d at 274. Giving every state entity retroactivity rights would only hamstring fair and efficient government.

Finally, it would be counterproductive because the Districts’ argument would often come at the expense of the private parties that the Retroactivity Clause actually protects. A government entity’s so-called retroactivity rights could be asserted in cases involving private actors. In *Eichenberg*, for example, a state agency did, in fact, assert that it would violate the Retroactivity Clause for the General Assembly to prohibit that agency from collecting *private individuals’* past due bills. *Id.* at 274-76. Thankfully, the court rejected the claim because the General Assembly had merely “waived a right it had to enforce collection against certain liable relatives; it imposed no new and retroactive obligation on its citizens.” *Id.* at 276. To hold otherwise would flip our Constitution on its head by suggesting that the government has constitutional rights against its citizens. *But see* Ohio Const. art. I § 2 (“All political power is inherent in the people. Government is instituted for their equal protection and benefit.”).

b. Modern out-of-state authorities confirm that subdivisions are not within the purview of state retroactivity clauses.

To the extent they have confronted this issue, many courts in States with retroactivity clauses have interpreted those bans as not applying to the State or its subdivisions. Since *Merrill*, the New Hampshire Supreme Court reaffirmed that a town “is not entitled to the benefit

of [the retroactivity clause] because it is a mere political subdivision of the State over which the legislature may exercise complete control except as provided by [a home-rule provision].” *Town of Nottingham v. Harvey*, 120 N.H. 889, 898 (1980). The Texas Supreme Court has reaffirmed the same since *De Cordova*: “The Legislature cannot by retroactive legislation applicable to municipal corporations destroy or impair vested rights which persons have acquired in their relationships with the municipal corporations . . . but Municipal Corporations do not acquire vested rights against the State.” *Deacon v. City of Euless*, 405 S.W.2d 59, 62 (Tex. 1966). And the U.S. Supreme Court, when interpreting Louisiana’s retroactivity clause, adopted the same construction. *Clark*, 95 U.S. at 654-55; *see also Sturm, Ruger & Co., Inc. v. City of Atlanta*, 253 Ga. App. 713, 720-21 (2002) (“We agree that the retroactive or retrospective application of a statute is unconstitutional if it affects the vested rights of citizens, . . . but we find no authority to support the City’s contention that it has a vested right to pursue this lawsuit.”); *State ex rel. Meyer v. Cobb*, 467 S.W.2d 854, 856 (Mo. 1971) (“The provision of the Constitution inhibiting laws retrospective in their operation is for the protection of the citizen and not the State.”) (citation omitted); *Greenaway’s Case*, 319 Mass. 121, 123 (1946) (“It is generally held that where a State enacts retroactive legislation impairing its own rights, it cannot be heard to complain on constitutional grounds.”); *City of Garden City v. City of Boise*, 104 Idaho 512, 515 (1983) (applying legislation retroactively because of legislature’s “absolute power” over subdivisions (citation omitted)); *Metro. Dev. & Hous. Agency v. S. Cent. Bell Tele. Co.*, 562 S.W.2d 438, 444 (Tenn. 1977) (“The general proposition that an agency created under the authority of a state does not have the substantive right to attack a statute of that state on constitutional grounds has since been followed by the Court and by other jurisdictions.”).

Unsurprisingly in light of this case law, a decision from Missouri—one of the States that Ohio’s framers looked to when debating the Retroactivity Clause, *see Debates and Proceedings* Vol. 1 at 278—is directly on point. In *Savannah R-III School District v. Public School Retirement System of Missouri*, 950 S.W.2d 854 (Mo. 1997), the Missouri Supreme Court held that the legislature may impair the rights of school districts without violating the state’s prohibition on retroactive laws. *Id.* at 858. The school districts had brought suit against the public retirement system, seeking a refund of overpayments the districts believed they had made to the system. *See id.* at 856-57. While the case was pending, the Missouri legislature passed a law forbidding the retirement system from refunding or adjusting benefit determinations based on alleged past overpayments. *See id.* at 857. The school districts then amended their complaint to challenge the legislature’s changes under Missouri’s retroactivity clause. The Missouri Supreme Court rejected the districts’ retroactivity arguments “[b]ecause the retrospective law prohibition was intended to protect citizens and not the state.” *Id.* at 858. As in Ohio, Missouri school districts are considered “‘instrumentalities of the state’” that exist to “‘facilitate effectual discharge of the General Assembly’s constitutional mandate to establish and maintain free public schools.’” *Id.* (citation omitted). It was therefore within the Missouri legislature’s power to withhold money from school districts through retroactive legislation. *Id.* So, too, here.

In sum, if upheld, the decision below would place Ohio against this weight of out-of-state authority. The Court has been hesitant to take that step in the past. *See, e.g., Ryan v. Connor*, 28 Ohio St. 3d 406, 408 (1986) (reversing earlier holding because Ohio courts “stood alone” and the “the courts of other jurisdictions ‘uniformly’” took the opposite view (citation omitted)); *Jelm v. Jelm*, 155 Ohio St. 226, 230 (1951) (same); *cf. Ohio Congress*, 2006-Ohio-5512 ¶ 10 (“Ohio is not alone” in its education policy choice). It should be hesitant to do so today as well.

5. The Tenth District mistakenly interpreted this Court’s cases when it held that the Retroactivity Clause applies to the State’s subdivisions.

For their part, the Tenth District and the Districts focus solely on cases that are either distinguishable or that silently apply the Retroactivity Clause to subdivisions without reasoning on this threshold question. See App. Op. ¶¶ 39-47 (citing *Cnty. Comm’rs of Hamilton Cnty. v. Rosche*, 50 Ohio St. 103 (1893); *State ex rel. Crotty v. Zangerle*, 133 Ohio St. 532 (1938) (per curiam); and *State ex rel. Bd. of Educ. of Kenton City Sch. Dist. v. State Bd. of Educ.*, 174 Ohio St. 257 (1963)); see also Districts’ Opp. Jur. 5-6 (citing, in addition, *City of Cleveland v. Zangerle*, 127 Ohio St. 91 (1933) (per curiam); *State ex rel. Outcalt v. Guckenberger*, 134 Ohio St. 457 (1938); and *Bd. of Educ. of the Cincinnati Sch. Dist. v. Hamilton Cnty. Bd. of Revision*, 91 Ohio St. 3d 308, 2001-Ohio-46). Because these cases ignore (1) the settled meaning of “retroactive laws” when the Retroactivity Clause was added to the Constitution, (2) the framers’ intent for the Clause to have this meaning, (3) the Constitution’s structure, and (4) the cases holding that retroactivity clauses do not protect subdivisions, the Court should not rely on them.

Start with the Tenth District’s main reliance on *Kenton*. The Tenth District stated that “a public school district’s guaranteed statutory right to School Foundation funding is an accrued substantive right ‘whether the guarantee is to political subdivision or an individual.’” App. Op. ¶ 47 (quoting *Kenton*, 174 Ohio St. at 261). But *Kenton* merely answered a question of statutory interpretation: Did the legislature mean for a 1961 amendment to impact rights conferred on a school district by a 1960 statute? 174 Ohio St. at 259. The 1960 statute guaranteed that merging school districts would receive a minimum level of funding for three years after their consolidation; the 1961 amendment limited this revenue. *Id.* at 258. The Court agreed that the 1961 amendment should not be interpreted to apply retroactively based on the presumption against retroactive application in the Revised Code. See *id.* at 260-62. Yet this statutory

presumption is triggered whether or not a law implicates the Retroactivity Clause. While, for example, remedial laws do not violate the Clause, *see Longbottom v. Mercy Hosp. Clermont*, 137 Ohio St.3d 103, 2013-Ohio-4068 ¶ 25, the Court applies the statutory presumption against retroactivity before determining whether a law is remedial, *see, e.g., Hyle v. Porter*, 117 Ohio St. 3d 165, 2008-Ohio-542 ¶¶ 7-8. Indeed, the Court has applied the statutory presumption even to a statute that could have “constitutionally be[en] given retroactive effect” because it “impair[ed] only the rights of the state.” *Sweeney*, 12 Ohio St. 2d at 87. Thus, that *Kenton* relied on the *statutory* presumption against retroactivity in a case by a school district says nothing about whether that district had *constitutional* retroactivity rights. And here, there can be no doubt as a matter of statutory interpretation that the General Assembly meant for the Budget Provisions to apply retroactively—so the Districts assert only a constitutional claim.

No better is the Districts’ reliance on *Cleveland*. While that case involved a retroactivity challenge by a city, the Court did not need to resolve the threshold question presented here because the relevant law otherwise comported with the Retroactivity Clause. 127 Ohio St. at 92-93. As described below, *see* Part B, this Court held that subdivisions lack retroactivity rights to state funds that have yet to be distributed to them. *Id.* Thus, *Cleveland* teaches that the Districts’ retroactivity claims must fail whether or not subdivisions have retroactivity rights.

That leaves four cases—*Rosche*, *Crotty*, *Outcalt*, and *Hamilton County Board of Revision*. To be sure, the Department admits that these cases found that the General Assembly had violated the Retroactivity Clause by passing laws imposing new obligations on subdivisions. *See Rosche*, 50 Ohio St. at 111-13 (holding that a law requiring a county to refund taxes that had already been paid into its coffers was unconstitutionally retroactive); *Crotty*, 133 Ohio St. at 538-39 (holding the same with respect to tax *penalties* paid into county coffers); *Outcalt*, 134 Ohio

St. at 462-63 (same); *Hamilton Cnty. Bd. of Revision*, 91 Ohio St. 3d at 316-17 (holding that a law permitting a party to correct errors in its valuation complaint was unconstitutionally retroactive); cf. *Perk v. City of Euclid*, 17 Ohio St. 2d 4 (1969) (*discriminatory* retroactive tax exemption was unconstitutional on many grounds). But none of these cases addressed whether the Retroactivity Clause *should* be interpreted to cover political subdivisions as an initial matter; they simply *assumed* the answer to that threshold question and immediately considered whether the law at issue was unconstitutionally obligatory or constitutionally remedial. That makes all the difference—especially where, as here, the cases that did *expressly* confront that threshold question have come out the opposite way. See, e.g., *Silsbee*, 38 Ohio St. at 447.

This Court and the U.S. Supreme Court have long held that silent, drive-by rulings on threshold legal questions lack precedential value. *State ex rel. United Auto., Aerospace, & Agric. Implement Workers of Am. v. Bureau of Worker’s Comp.*, 108 Ohio St. 3d 432, 2006-Ohio-1327 ¶ 46 (per curiam) (holding that if a case passes on a jurisdictional question *sub silentio*, it lacks precedential value on the question); *The Edward*, 14 U.S. 261, 276 (1816) (noting that where an issue in prior cases was “passed *sub silentio*, without bringing the point distinctly to our view” it is “no precedent”) (op. of Livingston, J.); *Brecht v. Abrahamson*, 507 U.S. 619, 631 (1993) (“[S]ince we have never squarely addressed the issue, and have at most assumed the applicability of [a particular standard of review], we are free to address the issue on the merits.”). These prior cases thus should be assigned no weight when analyzing this proposition of law. “The Court would risk error if it relied on assumptions that have gone unstated and unexamined” in the cases. *Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436, 1449 (2010).

Two related cases—*Winn* and *Avon Lake*—confirm that conclusion. In *Winn*, the U.S. Supreme Court held that taxpayers lacked standing to assert an Establishment Clause challenge

to a law granting tax credits for an individual's contributions to religious schools. *Id.* at 1440. Because many of its prior cases had reached the merits of similar challenges to tax-credit laws without considering whether the taxpayers had standing, the Court recognized that its holding “may seem in tension with several earlier cases.” *Id.* at 1448 (citing five cases). But the Court held that these cases were not precedent on the standing question because they failed to consider that threshold issue. *Id.* at 1448-49. The same logic applies even more so here. The standing question in *Winn* was a *non-waivable* jurisdictional issue that the federal courts had to consider on their own initiative. *See id.* at 1454 (Kagan, J., dissenting). The constitutional question in this case—whether subdivisions even have rights under the Retroactivity Clause—is a *waivable* merits issue. *See Gibson v. Meadow Gold Dairy*, 88 Ohio St. 3d 201, 204 (2000).

In *Avon Lake*, by comparison, this Court *already* faced a similar problem with respect to one of the cases on which the Tenth District below relied—*Crotty*. In addition to its retroactivity analysis, *Crotty* held that the relevant law violated the subdivision's equal-protection rights—without considering whether subdivisions could invoke the federal or state Equal Protection Clauses as an initial matter. 133 Ohio St. at 538-39. Later, when the Court expressly confronted that threshold question, it held that a “political subdivision, such as a school district, receives no protection from the Equal Protection or Due Process Clauses vis-a-vis its creating state.” *Avon Lake*, 35 Ohio St. 3d at 122. The Court did not even cite *Crotty*, let alone find it binding on the threshold issue. *Cf. id.* at 121 (“A search of Ohio cases has not located any other case dealing with this question.”). If the Court in *Avon Lake* could silently conclude that *Crotty* is not precedent on the threshold equal-protection question, the Court in this case can expressly conclude that *Crotty* is not precedent on the threshold retroactivity question.

If anything, the Court has *more* reason not to consider *Rosche*, *Crotty*, *Outcalt*, and *Hamilton County Board of Revision* binding precedent on this question. Those cases did not cite or distinguish the *preexisting* holding in *Silsbee* and its progeny that the Retroactivity Clause applies to individuals, not the State or its subdivisions. *Silsbee*, 38 Ohio St. at 447; *see White*, 2012-Ohio-2583 ¶ 34; *Sweeney*, 12 Ohio St. 2d at 87; *Ogelvee*, 39 Ohio St. at 207, 215; *Bates*, 20 Ohio St. 362, syl. ¶¶ 3-4. If there is a conflict between these conflicting lines of this Court’s cases, the Court should follow what the Sixth Circuit called the “settled rule” that the State may pass statutes retroactively affecting subdivisions. *N.Y. Life Ins.*, 106 F. at 127.

B. Even if this Court concludes that the Districts may assert a claim under the Retroactivity Clause, the Budget Provisions are not unconstitutionally retroactive.

Even if the Retroactivity Clause applies to state subdivisions, the Budget Provisions do not violate it. The Retroactivity Clause targets only legislative actions that—at the least—impair a party’s reasonable expectation of finality. The Districts have no such reasonable expectations of finality here because: (1) any expectation to the State’s money has always been limited to funds that have *already* been distributed to subdivisions, not funds (like the funds at issue here) that have yet to enter their coffers; and (2) subdivisions can have no reasonable expectations where, as here, the background law was ambiguous. For its part, the Tenth District correctly recognized that the Districts had no *vested* right to the state funds at issue, but then paradoxically and incorrectly held that they had an *accrued* right to the very same funds.

1. The Retroactivity Clause protects only *vested* or *accrued* substantive rights, e.g., those rights in which a party has a reasonable expectation of finality.

The Retroactivity Clause distinguishes “between constitutional and unconstitutional retroactivity.” *Hamilton Cnty. Bd. of Revision*, 91 Ohio St. 3d at 315. Over the century-and-a-half of interpreting the Clause, this Court has used as many as six different formulations to draw this line between impermissible and permissible retroactivity. *Compare Van Fossen v. Babcock*

& *Wilcox Co.*, 36 Ohio St. 3d 100, 106-07 (1988), with *Bielat*, 87 Ohio St. 3d at 357. At bottom, an unconstitutional retroactive law must (on the plaintiff's side) "impair vested rights" or (on the defendant's side) "impose new duties." *Bielat*, 87 Ohio St. 3d at 354.

a. On the "rights" side of this line, "not just any asserted 'right' will suffice." *Id.* at 357. Instead, a challenger must prove two things. *First*, the right must be "a *vested* right or an *accrued* . . . right." *Pratte v. Stewart*, 125 Ohio St. 3d 473, 2010-Ohio-1860 ¶ 38 (first emphasis added). To qualify as adequately vested or accrued, a challenger must show—at a bare minimum—that the alleged right matured to the point of creating "a *reasonable expectation of finality*" in the challenger. *Bielat*, 87 Ohio St. 3d at 357 (citation omitted). Although the Court's formulations of vested or accrued rights might require *more* than this reasonable expectation of finality, the Court has said retroactivity claims will fail when even such an expectation is lacking. *See, e.g., id.* (claim did not "even" impair a reasonable expectation of finality); *State ex rel. Matz v. Brown*, 37 Ohio St. 3d 279, 281 (1988) (clause requires "at least" a reasonable expectation of finality). That is, a reasonable expectation of finality is the absolute *floor* that any challenger must establish to show that legislation is unconstitutional. *Matz*, 37 Ohio St. 3d at 281; *see also White*, 2012-Ohio-2583 ¶ 44. This makes sense in light of the Clause's purpose to protect a private party's settled expectations and create stability with respect to the party's prior affairs. *Silsbee*, 38 Ohio St. at 447; *Debates and Proceedings* Vol. 1 at 279.

Second, the right must concern *substantive*, as opposed to *remedial* or *procedural*, matters. The Court has said, for example, that the Retroactivity Clause "has no reference to laws of a remedial nature providing rules of practice, courses of procedure, or methods of review." *State ex rel. Slaughter v. Indus. Comm'n*, 132 Ohio St. 537, syl. ¶ 3 (1937); *see also, e.g.,*

Longbottom, 2013-Ohio-4068 ¶¶ 25-28 (changes to the prejudgment interest statute affecting the method of calculating that interest were merely remedial rather than substantive).

b. In several specific settings, the Court has provided further guidance over when a reasonable expectation of finality in a substantive right will arise or be missing. To begin with, no reasonable expectation of finality can exist in the continuation of any common-law or statutory rules. “A right . . . cannot be characterized as vested unless it constitutes more than a mere expectation or interest based upon an anticipated continuance of existing laws.” *Jordan*, 2008-Ohio-6137 ¶ 9 (internal quotation marks omitted); *Strock v. Pressnell*, 38 Ohio St. 3d 207, 214 (1988) (“there is no property or vested right in any of the rules of the common law”); *Haskins v. Bias*, 2 Ohio App. 3d 297, 300 (6th Dist. 1981) (Douglas, J.) (finding that a statute eliminating the tort of alienation of affection was constitutional even though the particular events predated the statute because plaintiff had “only a mere expectancy” in the common law). It “would encroach upon the Legislature’s ability to guide the development of the law if [the Court] invalidated legislation simply because the rule enacted by the Legislature rejects some cause of action currently preferred by the courts.” *Groch v. Gen. Motors Corp.*, 117 Ohio St. 3d 192, 2008-Ohio-546 ¶ 118 (citation omitted).

Likewise, no reasonable expectation of finality exists in state funds that have yet to be distributed to a state subdivision. “No governmental subdivision of the state has any vested right, *at least until distribution is made*, in any taxes levied and in the process of collection. *Until such distribution is made*, the Legislature of Ohio is fully competent to divert the proceeds among those local subdivisions as it deems best to meet the emergencies which it finds to exist.” *Cleveland*, 127 Ohio St. at 92-93 (emphases added). In *Cleveland*, for example, a statute diverted public funds previously destined for the City of Cleveland to libraries and park districts

instead. *See* 127 Ohio St. at 91-92. Rejecting the city’s retroactivity argument, this Court held that no subdivision has a vested right in state funds until the funds were actually distributed to the subdivision. *Id.* at 92-93. The Court drew this same distinction in *Outcalt*. There, it held that “subdivisions of the state have no vested rights in unpaid penalties, interest and charges on uncollected delinquent taxes.” 134 Ohio St. at 462-63. So the General Assembly could pass legislation retroactively prohibiting subdivisions from seeking unpaid penalties and interest owed by delinquent taxpayers, but not legislation requiring the subdivisions to *refund* the penalties and interest that those subdivisions had *already* received into their accounts from delinquent taxpayers. *Id.* at 462-65; *cf. Crotty*, 133 Ohio St. at 533 (finding retroactivity problem for law requiring subdivision to return funds *already* paid).

Nor can a reasonable expectation of finality exist when a right’s exercise depends “upon the action or inaction of another.” *State ex rel. Michaels v. Morse*, 165 Ohio St. 599, 607 (1956) (per curiam). A beneficiary of a will, for example, has no vested right in the testator’s property before the testator’s death because the testator could always change the will before then. *Bielat*, 87 Ohio St. 3d at 357-58. And when a right to attorney’s fees hinged on winning the claim on the merits, a statute eliminating that right before the party won the claim did not impair any reasonable expectation of finality in the attorney’s fees award. *See Morse*, 165 Ohio St. at 607.

Finally, no reasonable expectation of finality can exist if the prior law on which the challenger relies for the asserted right was itself unclear or ambiguous. *See Ackison v. Anchor Packing Co.*, 120 Ohio St. 3d 228, 2008-Ohio-5243 ¶¶ 18-27; *Nationwide Mut. Ins. Co. v. Kidwell*, 117 Ohio App. 3d 633, 642 (4th Dist. 1996) (“When the Ohio General Assembly clarifies a prior Act, there is no question of retroactivity.”). From the earliest days of the Clause, this Court has recognized that the General Assembly may pass statutes to clarify mistakes by

validating “that which it could have authorized in the first instance” and which it first enacted by “crude and imperfect” statutes. *Burgett v. Norris*, 25 Ohio St. 308, 317 (1874); *Miller v. Graham*, 17 Ohio St. 1, 10 (1866). “[I]t has long been held that the purpose of an amendment may be either to add new provisions and conditions to the section as it then stands, or for the purpose of making plain the meaning and intent thereof.” *State ex rel. Bunch v. Indus. Comm’n*, 62 Ohio St. 2d 423, 428 (1980) (internal quotation marks omitted). And when the General Assembly “intend[s] to merely clarify” a statute “in response to” an appellate decision, it does not pass an impermissible retroactive statute. *Id.* In *Bunch*, for example, the new statute prohibited an employer from deducting certain overlapping benefit payments from a workers’ compensation award. Even so, the amended statute that “overruled” a district court’s contrary decision was not impermissibly retroactive. *Id.* at 427-28; *see also Nationwide*, 117 Ohio App. 3d at 642-43 (noting that a clarification eliminating subrogation rights recognized in prior appellate decisions was not unconstitutionally retroactive); *Scott v. Spearman*, 115 Ohio App. 3d 52, 56 (5th Dist. 1996) (upholding statute that “expanded” the meaning of next-of-kin in a preexisting statute). Likewise, this Court upheld asbestos legislation departing from “two appellate decisions” on the topic because the limited Ohio case law showed that no “settled common law” existed about it. *Ackison*, 2008-Ohio-5243 ¶ 26.

2. The Districts lacked any reasonable expectations of finality in educational funding that had not been distributed to them.

The Court should hold that the Districts lacked a reasonable expectation of finality both (a) because they had no reasonable expectation of finality in state funds they had yet to receive, and (b) because the challenged legislation merely clarifies the General Assembly’s intent.

a. The Districts have no reasonable expectation of finality in any state educational funding that had not been distributed to them.

The Districts’ retroactivity claim initially fails because they had no reasonable expectation in funds that they had yet to receive. The Tenth District correctly recognized that the Districts do not have any reasonable expectation of finality in the amount of state funding they receive because such funding is “conditional or contingent, rather than absolute or vested.” App. Op. ¶ 36. This conclusion comports with the Court’s case law holding that political subdivisions lack vested rights in any of the State’s money “at least until distribution is made” of the particular funds. *Cleveland*, 127 Ohio St. at 93. “Until such distribution is made, the Legislature of Ohio is fully competent to divert the proceeds among those local subdivisions as it deems best.” *Id.* The Districts could not, therefore, have a reasonable expectation of finality in the funds they seek here—funds that the Department *never* provided to them. Even with respect to the 2005 fiscal year, it is undisputed that the Department did *not* demand that the Districts repay *any* funds that had entered their coffers; instead, it merely adjusted *future* distributions to take into account the overpayments that had been made. *See, e.g., Toledo Compl. ¶ 38 (Supp. S-10); Answer to Toledo Compl. ¶¶ 38-39 (Supp. S-21).*

This rule—that there is no reasonable expectation of finality in funds not yet distributed—is particularly appropriate in the educational context. It is undisputed that the amount of funding that a district has received has historically been subject to fluctuations from year to year based on both changing factual (the number of students enrolled) and legal (the funding formula provided by the General Assembly) conditions. Because state funding is determined on a per-student basis, funds to the district are reduced by an equal amount for every student who leaves the district. *See* Legislative Office of Education Oversight, *Community Schools in Ohio: Implementation Issues and Impact on Ohio’s Educational System*, Vol. 1 at 32-

33 (2003); *see generally* Community Research Partners, Ohio Student Mobility Research Project, *Student Nomads: Mobility in Ohio's Schools* (Nov. 2012), available at <http://tinyurl.com/p9x8ouu> (studying student mobility in Ohio secondary schools from 2009 to 2011). In fiscal year 2002, for example, community-school transfers reduced funding to the Dayton school district by 20.8%. *See* Legislative Office, *Community Schools*, Ex. 9 (listing \$19,672,909 in community-school transfers and a 15.5% reduction in enrollment in Dayton). Similarly, in the Toledo school district, only 60.1% of grade 8-11 students who started the year in the district in October 2009 were still in the district's schools two years later (excluding those who graduated high school). *See* Community Research Partners, Ohio Student Mobility Research Project, *Statewide Overview* 10 (Jan. 2013), available at <http://tinyurl.com/pnmfeut>. Thus, because a district's right to future funds depends "upon the action or inaction of" others, it cannot be described as vested. *Morse*, 165 Ohio St. at 607; *see Bielat*, 87 Ohio St. 3d at 357-58.

Not only do the inputs to the funding formula change—thus preventing the Districts from reasonably relying on a specific level of State funding from year to year—but the formula itself changes as well. Since fiscal year 2005, the General Assembly has implemented four school funding models. *See Ohio School Funding: Historic and Current Approaches* (2012), available at <http://tinyurl.com/otp3r5d> (discussing Building Blocks Foundation, Evidence-Based Model, and Bridge formulas); Office of Governor John R. Kasich, *Achievement Everywhere, Plan*, available at <http://tinyurl.com/nlwr7mq> (noting that a new formula was implemented for fiscal years 2014-2015 which provides for an additional \$771 million in funding in 2015 as compared to 2013).

b. The Districts had no reasonable expectation of finality because the Budget Provisions merely clarified the General Assembly’s intent about an ambiguous statutory question.

In addition, the Districts had no expectation of finality in the use of their October Count for funding purposes because the Department’s legal authority to adjust from the Count at the time was, at best, unclear. Later statutes unambiguously resolved that question in the Department’s *favor*, but the ambiguity in the pre-2007 statute did not repose in the Districts an expectation of finality as to the use of their October Counts. The clarification of the pre-2007 law therefore did not violate the Retroactivity Clause, because “[w]hen the Ohio General Assembly clarifies a prior Act, there is no question of retroactivity.” *Nationwide*, 117 Ohio App. 3d at 642. That is all that happened here.

Specifically, the statutes involved here clarified an unclear proposition—what authority did the Department possess to adjust public school districts’ October Counts? In two steps, the General Assembly answered that the Department had always had authority to adjust these numbers and was not *bound* to use whatever number a given school district submitted. In 2007, the General Assembly made explicit that the Department had this authority. *See* Am. Sub. H.B. 119 (127th G.A.), 2007 Ohio Legis. Serv. Ann., No. 4, at L-832-3 and L-877 (codified at R.C. 3317.03(K) (2008)). As the Legislative Service Commission’s report explained, the 2007 law “formally” recognized the authority that the Department had been exercising. Legislative Service Commission, 2007 Digest of Enactments at 22. Later, in 2009, the General Assembly acted again, this time passing a law that made clear that the Department should face no liability to school districts for previously departing from the October Count *in prior years*. Uncodified § 265.60.70 of the 2009 biennial budget, Am. Sub. H.B. 1 (128th G.A.). These clarifications unambiguously illustrate the General Assembly’s intent that the Department acted within its authority and the funding formula cannot be the basis of a retroactivity challenge.

To be sure, before the 2009 Budget Provision, one district court had interpreted the pre-existing law as requiring the Department only to use the October Count. *Cincinnati City Sch. Dist.*, 2008-Ohio-1434 ¶ 29. But such a prior decision has never stopped this Court from finding a statutory amendment to qualify as a *clarification* rather than a *substantive* change. In *Bunch*, the Court held that an amendment overruling a district court’s decision merely clarified prior ambiguous law—even though it could have been “argued that the General Assembly substantially altered the statute and did not merely clarify it.” *Bunch*, 62 Ohio St. 2d at 427. And in *Ackison*, the Court held that a statute altering tort law as applied to asbestos claims could apply retroactively even though it overruled two prior appellate decisions because those decisions did not enshrine Ohio’s “settled common law.” 2008-Ohio-5243 ¶ 26.

3. The Tenth District’s contrary analysis relied on an untenable distinction.

In light of the rule that no expectation of finality exists in state funds that have not been distributed, the Tenth District held “that the Districts’ statutory right to School Foundation funds is conditional or contingent rather than absolute or vested,” App. Opp. ¶ 36, and rejected the view that the Budget Provisions are “unconstitutionally retroactive because [they] impair[] or take[] away a *vested* right,” *id.* ¶ 38 (emphasis added). Yet the court then held that the Districts had an “*accrued* substantive right” to the funding it had just found to be *conditional*. *Id.* ¶ 39 (emphasis added). This distinction between vested and accrued rights is without a difference.

None of the Court’s cases draw such a fine distinction. To be sure, several cases, in describing what qualifies as an unconstitutional retroactive law, have identified both a law that “impairs vested rights” and a law that “affects an accrued substantive right.” *See, e.g., Longbottom*, 2013-Ohio-4068 ¶ 22; *Pratte*, 2010-Ohio-1860 ¶ 37; *Bielat*, 87 Ohio St. 3d at 354. But the Court has never suggested that there is an iota of difference between these different ways to say the same thing. To the contrary, the Court has suggested that the phrasings mean the same

thing. *White* defined an “accrued right” as one that had “matured” in the same paragraph it noted that a right is not “vested” if it depends on the actions of others before it comes into being (i.e., matures). *White*, 2012 Ohio-2583 ¶ 35 (citation omitted). Other cases use the phrases interchangeably. *See, e.g., Pratte*, 2010-Ohio-1860 ¶ 38 (“Because Pratte’s cause of action had not yet accrued . . . , Pratte . . . did not have a vested right or an accrued substantive right to file a lawsuit.”). Finally, the case that coined the phrase “accrued substantive rights” did not do so to establish a new category of retroactivity right, but to distinguish substantive rights (which could not be changed retroactively if they had vested) from procedural rights (which could always be changed retroactively). *Slaughter*, 132 Ohio St. 537, syl. ¶ 3. In short, the adjectives “accrued” or “vested” distinguish matured from contingent rights. Once the Tenth District found the Districts’ rights to be contingent, it should have ruled for the Department.

Kenton, the only decision that the Tenth District cited as its support, provides no basis for its distinction between vested and accrued rights. *See App. Op.* ¶¶ 39-44, 47. As noted, *Kenton* merely considered a question of statutory interpretation and applied the *statutory* presumption against retroactivity without considering any constitutional claim. 174 Ohio St. at 260-63. Just as *Kenton*’s statutory holding provides no grounds for concluding that school districts have retroactivity rights within the meaning of the Constitution, *see Part A.5*, so too, its statutory holding provides no grounds for concluding that a party has a reasonable expectation of finality in anticipated future funds within the meaning of the Constitution. In other words, whether a particular right was vested or non-vested, substantive or remedial, the canon of statutory presumption against retroactivity still applies to all statutes. *See Sweeney*, 12 Ohio St. 2d at 87. Indeed, that *Kenton* went out of its way to note that the rights at issue there need not have become “vested rights” to be protected by the statutory presumption goes a long way toward

showing that the Court did *not* think the rights were constitutionally (as opposed to statutorily) protected. 174 Ohio St. at 261. *Kenton* simply never asked, and so had no opportunity to answer, a *constitutional* question about accrued substantive rights.

* * *

The Retroactivity Clause does not protect the Districts. Even if the Clause did, it would not block laws that merely prevented the Districts from recovering funds that they had never received and clarified a previously ambiguous statutory scheme.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

MICHAEL DEWINE (0009181)
Attorney General of Ohio

/s Eric E. Murphy

ERIC E. MURPHY* (0083284)
State Solicitor

**Counsel of Record*

MICHAEL J. HENDERSHOT (0081842)
Chief Deputy Solicitor
HANNAH C. WILSON (0093100)
MATTHEW R. CUSHING (0092674)
Deputy Solicitors

TODD R. MARTI (0019280)
Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
eric.murphy@ohioattorneygeneral.gov

Counsel for Appellants

The Ohio Department of Education, State
Board of Education, and Dr. Richard Ross

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of Appellants The Ohio Department of Education, State Board of Education, and Dr. Richard Ross was served on July 13, 2015, by U.S. mail on the following:

Nicholas A. Pittner
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215

Keith Wilkowski
Marshall & Melhorn, LLC
Four Seagate, Eighth Floor
Toledo, Ohio 43604

Counsel for Appellees
Toledo City School Dist. Bd. of Educ.,
Dayton City School Dist. Bd. of Educ.,
and Cleveland Metropolitan School Dist.
Bd. of Educ.

Co-Counsel for Appellee
Toledo City School Dist. Bd. of Educ.

Jyllian R. Guerriero
Dayton City School District
115 South Ludlow Street
Dayton, Ohio 45402

Wayne J. Belock
Chief Legal Counsel
Cleveland Metropolitan School District
1380 East Sixth Street
Cleveland, Ohio 44114

Co-Counsel for Appellee
Dayton City School Dist. Bd. of Educ.

Co-Counsel for Appellee
Cleveland Metropolitan School Dist.
Bd. of Educ.

/s Eric E. Murphy
Eric E. Murphy
State Solicitor

In the
Supreme Court of Ohio

TOLEDO CITY SCHOOL DISTRICT
BOARD OF EDUCATION, *et al.*,

Appellees,

v.

STATE BOARD OF EDUCATION OF
OHIO, *et al.*,

Appellants.

14-1769
Case No. _____

On appeal from the Franklin County
Court of Appeals,
Tenth Appellate District

Court of Appeals
Case Nos. 14AP-93
14AP-94
14AP-95

**NOTICE OF APPEAL OF
APPELLANTS THE OHIO DEPARTMENT OF EDUCATION,
STATE BOARD OF EDUCATION, AND DR. RICHARD ROSS**

NICHOLAS A. PITTNER (0023159)
JAMES J. HUGHES, III (0036754)
SUSAN B. GREENBERGER (0010154)
JENNIFER A. FLINT (0059587)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
614-227-2316; 614-227-2390 fax
npittner@bricker.com
Counsel for Appellees
Toledo City School Dist. Bd. of Edn.,
Bonnie Jo Hermann and Christine Varwig;
Dayton City School Dist. Bd. of Edn., Keith
Cosby and Ann Marie Snyder; Cleveland
Metropolitan School Dist. Bd. of Edn.,
Dessie M. and Christopher Sanders, Edith C.
Britt and Angela Barnett

MICHAEL DEWINE (0009181)
Attorney General of Ohio
ERIC E. MURPHY* (0083284)
State Solicitor
**Counsel of Record*
MICHAEL J. HENDERSHOT (0081842)
Chief Deputy Solicitor
ASHON L. McKENZIE (0087049)
TODD R. MARTI (0019280)
Assistant Attorneys General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
eric.murphy@ohioattorneygeneral.gov
Counsel for Appellants
The Ohio Department of Education,
State Board of Education, and Dr. Richard
Ross



KEITH WILKOWSKI (0013044)
AMY M. NATYSHAK (0043941)
Marshall & Melhorn, LLC
Four Seagate, Eighth Floor
Toledo, Ohio 43604
419-249-7100; 419-249-7151 fax
wilkowski@marshall-melhorn.com

Co-Counsel for Appellee
Toledo City School Dist. Bd. of Education

JYLLIAN R. GUERRIERO (0088714)
Dayton City School District
115 South Ludlow Street
Dayton, Ohio 45402
937-542-3007; 937-542-3188 fax
jrguerri@dps.k12.oh.us

Co-Counsel for Appellee
Dayton City School Dist. Bd. of Education

WAYNE J. BELOCK (0013166)
Chief Legal Counsel
Cleveland Metropolitan School District
1380 East Sixth Street
Cleveland, Ohio 44114
216-574-8210; 216-574-8108 fax
wayne.j.belock@cmsdnet.net

Co-Counsel for Appellee
Cleveland Metropolitan School Dist.
Bd. of Education

NOTICE OF APPEAL

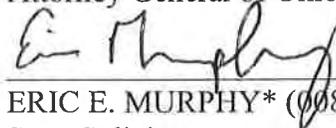
Appellants The Ohio Department of Education, State Board of Education, and Dr. Richard Ross hereby give notice of their discretionary appeal to this Court, pursuant to Ohio Supreme Court Rule 7.01, from a decision of the Tenth District Court of Appeals captioned *Toledo City School District Board of Education, et al. v. State Board of Education of Ohio, et al.*, Nos. 14AP-93, 14AP-94, and 14AP-95 and journalized on August 28, 2014.

Date-stamped copies of the Tenth District's Judgment Entry and Decision and the Decision and Entry of the Franklin County Common Pleas are attached as Exhibits 1-3, respectively, to the Memorandum in Support of Jurisdiction.

For the reasons set forth in the accompanying Memorandum in Support of Jurisdiction, this case involves a substantial constitutional question of public and great general interest.

Respectfully submitted,

MICHAEL DEWINE (0009181)
Attorney General of Ohio



ERIC E. MURPHY* (0083284)
State Solicitor

**Counsel of Record*

MICHAEL J. HENDERSHOT (0081842)

Chief Deputy Solicitor

ASHON L. McKENZIE (0087049)

TODD R. MARTI (0019280)

Assistant Attorneys General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

eric.murphy@ohioattorneygeneral.gov

Counsel for Appellants

The Ohio Department of Education,

State Board of Education, and Dr. Richard

Ross

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal of Appellants The Ohio Department of Education, State Board of Education, and Dr. Richard Ross was served by regular U.S. mail this 10th day of October, 2014, upon the following counsel:

Nicholas A. Pittner
James J. Hughes, III
Susan B. Greenberger
Jennifer A. Flint
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215

Counsel for Appellees
Toledo City School Dist. Bd. of Edn.,
Bonnie Jo Hermann and Christine Varwig;
Dayton City School Dist. Bd. of Edn., Keith
Cosby and Ann Marie Snyder; Cleveland
Metropolitan School Dist. Bd. of Edn.,
Dessi M. and Christopher Sanders, Edith C.
Britt and Angela Barnett

Jyllian R. Guerriero
Dayton City School District
115 South Ludlow Street
Dayton, Ohio 45402

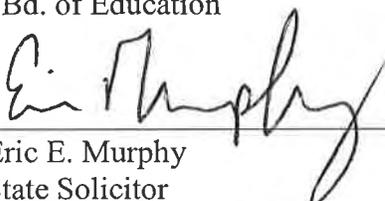
Co-Counsel for Appellee
Dayton City School Dist. Bd. of Education

Keith Wilkowski
Amy M. Natyshak
Marshall & Melhorn, LLC
Four Seagate
Eighth Floor
Toledo, Ohio 43604

Co-Counsel for Appellee
Toledo City School Dist. Bd. of Education

Wayne J. Belock
Chief Legal Counsel
Cleveland Metropolitan School District
1380 East Sixth Street
Cleveland, Ohio 44114

Co-Counsel for Appellee
Cleveland Metropolitan School Dist.
Bd. of Education


Eric E. Murphy
State Solicitor

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Toledo City School District Board of Education et al.,	:	
	:	
Plaintiffs-Appellees/ [Cross-Appellants],	:	
v.	:	No. 14AP-93
	:	(C.P.C. No. 11CV-14120)
State Board of Education et al.,	:	
	:	(REGULAR CALENDAR)
Defendants-Appellants/ [Cross-Appellees].	:	
	:	
Dayton City School District Board of Education et al.,	:	
	:	
Plaintiffs-Appellees/ [Cross-Appellants],	:	
	:	
v.	:	No. 14AP-94
	:	(C.P.C. No. 11CV-11809)
State Board of Education et al.,	:	
	:	(REGULAR CALENDAR)
Defendants-Appellants/ [Cross-Appellees].	:	
	:	
Cleveland Metropolitan School District Board of Education et al.,	:	
	:	
Plaintiffs-Appellees/ [Cross-Appellants],	:	
	:	
v.	:	No. 14AP-95
	:	(C.P.C. No. 11CV-13689)
State Board of Education et al.,	:	
	:	(REGULAR CALENDAR)
Defendants-Appellants/ [Cross-Appellees].	:	

Franklin County Ohio Court of Appeals Clerk of Courts- 2014 Aug 28 8:54 PM-14AP000093

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on August 28, 2014, having overruled appellants' sole assignment of error and having overruled cross-appellants' sole assignment of error, it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs shall be assessed against appellants.

CONNOR, TYACK & BROWN, JJ.

/S/ JUDGE

Tenth District Court of Appeals

Date: 08-28-2014
Case Title: TOLEDO CITY SCHOOL DISTRICT BOARD EDUCATION -VS- OHIO STATE BOARD EDUCATION
Case Number: 14AP000093
Type: JEJ - JUDGMENT ENTRY

So Ordered



/s/ Judge John A. Connor

Electronically signed on 2014-Aug-28 page 3 of 3

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Toledo City School District Board of Education et al.,	:	
	:	
Plaintiffs-Appellees/ [Cross-Appellants],	:	
v.	:	No. 14AP-93
	:	(C.P.C. No. 11CV-14120)
State Board of Education et al.,	:	
	:	(REGULAR CALENDAR)
Defendants-Appellants/ [Cross-Appellees].	:	
	:	
Dayton City School District Board of Education et al.,	:	
	:	
Plaintiffs-Appellees/ [Cross-Appellants],	:	
v.	:	No. 14AP-94
	:	(C.P.C. No. 11CV-11809)
State Board of Education et al.,	:	
	:	(REGULAR CALENDAR)
Defendants-Appellants/ [Cross-Appellees].	:	
	:	
Cleveland Metropolitan School District Board of Education et al.,	:	
	:	
Plaintiffs-Appellees/ [Cross-Appellants],	:	
v.	:	No. 14AP-95
	:	(C.P.C. No. 11CV-13689)
State Board of Education et al.,	:	
	:	(REGULAR CALENDAR)
Defendants-Appellants/ [Cross-Appellees].	:	

D E C I S I O N

Rendered on

Bricker & Eckler LLP, Nicholas A. Pittner, James J. Hughes, III, Susan B. Greenberger and Jennifer A. Flint; Marshall & Melhorn, LLC, Keith Wilkowski and Amy M. Natyshak, for appellees [cross-appellants] Toledo City School District Board of Education.

Jyllian R. Guerriero, for appellees [cross-appellants] Dayton City School District Board of Education.

Wayne J. Belock, for appellees [cross-appellants] Cleveland Metropolitan School District Board of Education.

Michael DeWine, Attorney General, and Todd R. Marti, for appellants [cross-appellees].

APPEALS from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} In this consolidated appeal, defendants-appellants, State Board of Education of Ohio, State Superintendent of Public Instruction, and Ohio Department of Education (collectively "ODE"), appeal from a judgment entry of the Franklin County Court of Common Pleas in favor of plaintiffs-appellees, denying in part ODE's motion for judgment on the pleadings as to the claims asserted by Toledo City School District Board of Education, Dayton City School District Board of Education, and Cleveland Metropolitan School District Board of Education ("Districts"). Plaintiffs-appellees/cross-appellants, Bonnie Jo Herman, Christine Varwig, Keith Crosby, Ann Marie Snyder, Dessie M. and Christopher Saunders, Edith C. Britt and Angela Barnett (collectively "Individual Plaintiffs"), have filed a cross-appeal from the judgment entry granting in part ODE's motion for judgment on the pleadings as to the claims asserted by Individual Plaintiffs. For the reasons that follow, we affirm the judgment of the trial court.

A. Facts and Procedural History

{¶ 2} The three cases involved in this appeal arise out of a school funding dispute between the parties that began in fiscal year ("FY") 2005.¹ The statutory school funding system in place from FY 2005 through FY 2007, required ODE to provide public school districts with funding from the School Foundation based upon the Average Daily Membership ("ADM"). Simply stated, ADM is the number of full-time equivalent ("FTE") students receiving educational services from the school district plus the number of students within the district who chose to receive educational services from other sources, including community schools. In the first full week of October in each fiscal year, the school districts determine their ADM by making a single count of every student eligible to receive educational services in the district ("October Count"). R.C. 3317.03(A) requires the superintendent for each public school district to certify the October Count. Public school districts in this state receive School Foundation funding based exclusively on a formula utilizing the ADM ("Formula ADM").

{¶ 3} In contrast to the single-count employed by the public school districts in calculating ADM, community schools count and report their community school average daily membership ("CSADM") on a monthly basis. The CSADM is the number of students attending a particular community school each month, as reported by the community school. The community school receives funding at a predetermined rate per student for each student attending the school. ODE deducts community school funding from the public school funding in the district in which the community school is located.

{¶ 4} In *Cincinnati City School Dist. Bd. of Edn. v. State Bd. of Edn. of Ohio*, 176 Ohio App.3d 157, 2008-Ohio-1434 (1st Dist.),² the First District Court of Appeals explained the difference between statutory funding for public schools and community schools as follows:

There is an important distinction between the "snapshot" concept that public schools use to count pupils at one time early in the year and the monthly CSADM report. For school districts, once the Formula ADM has been certified, school-district funding is neither increased nor decreased by the enrollment or withdrawal of pupils after the October count. (The sole exception is the enrollment of a district student in a

¹ Under R.C. 9.34, a school district fiscal year begins on July 1 and ends on June 30 of the following year.

² We shall refer to this case as *Cincinnati* or *Cincinnati decision*.

community school after the October count, when such a student has not been included in the Formula ADM.) In contrast, funding for community schools is adjusted monthly based on the number of students reported in the CSADM report. Thus, funding may increase or decrease with the enrollment or withdrawal of a pupil in a community school. So, unlike public schools, community schools are paid for students upon enrollment, but public schools must absorb new students without commensurate additional funding.

Id. at ¶ 7, citing R.C. 3317.03(F)(3).

{¶ 5} ODE acknowledges that midway through FY 2005, it discovered that many districts had reported higher numbers of charter school students in their ADM than the charter schools had reported in the CSADM. ODE assumed the CSADM was a more accurate estimate of the number of students attending community schools in a particular district. Accordingly, ODE recalculated the districts' Formula ADM by substituting the CSADM's figures for those reported by the districts in their October Count. As a result of the recalculation, some districts realized a lower ADM for FY 2005 and a corresponding reduction in School Foundation funding.

{¶ 6} Because the public school districts had already received some FY 2005 funding based on the higher ADM, ODE determined that those districts had been overpaid. ODE then decided to recoup the claimed overpayment by reducing future payments to the affected districts. As a consequence of its recalculation of the districts' FY 202005 ADM, ODE reduced Dayton's FY 2005 ADM by approximately 688 FTE, Cleveland's by 575, and Toledo's by 561. After reducing the districts' FY 2005 ADM, ODE determined that Dayton's overpayment was approximately \$4,792,304.80, Cleveland's overpayment was approximately \$1,857,311, and Toledo's overpayment was approximately \$3,576,948. ODE began recouping these funds from Toledo in May 2006 and from Dayton and Cleveland in August 2006. The Districts allege that ODE's action was contrary to law.

{¶ 7} Additionally, the Districts contend that ODE is required to make an upward adjustment to a public school district's Formula ADM to account for community school students who are entitled to attend school in the public school district but who were not included in the District's ADM certified in October, regardless of whether such students were enrolled in a community school when the Districts made the October Count.

According to the Districts, ODE failed to adjust the Districts' Formula ADM in FY 2005 to account for these "add-in students."

{¶ 8} The Districts also allege that they are entitled to a number of "guarantee" funds in the event that an unanticipated loss of funding occurs due to certain specified circumstances beyond the Districts' control. The Districts now claim that they were entitled to receive additional School Foundation funding pursuant to one or more of the guarantee provisions, but that ODE did not provide such additional funding in FY 2005 through FY 2007.

{¶ 9} In 2008, the Cincinnati School District Board of Education ("CSD") filed an action against ODE in Hamilton County Court of Common Pleas disputing ODE's method of calculating funding to public school districts and seeking the return of the sums wrongfully recouped or withheld by ODE in FY 2005 through FY 2007. *See Cincinnati City School Dist. Bd. of Edn. v. State Bd. of Edn. of Ohio*, Hamilton C.P. No. A0603908 (Jan. 5, 2007).³ CSD alleged that the controlling school funding statutes required ODE to use a public school districts' October Count as the sole basis for determining Formula ADM, and that ODE violated law by employing the CSADM in recalculating the districts' FY 2005 ADM. The trial court granted relief to CSD, and ODE appealed to the Hamilton County Court of Appeals.

{¶ 10} In *Cincinnati*, the question for the court of appeals was whether the trial court erred when it found that ODE utilized the wrong data in calculating the number of students attending community schools in CSD during FY 2005 and in subsequent years, resulting in reduced funding for CSD during FY 2006 and FY 2007. *Id.* at ¶ 1. The court of appeals held that the ADM certified by the CSD Superintendent as a result of the October Count was the only method by which ODE could calculate the amount of general public education funding to which a district was entitled, and that Ohio law did not permit ODE to adjust ADM in order to reflect the numbers in the monthly CSADM. The court further determined that ODE could employ the CSADM only when making the appropriate deductions from public school funding and when making payment to community schools. *Id.*, citing R.C. 3317.022(A) and 3317.03(A).

³ Appellee Dayton City School District was also a party to that litigation.

{¶ 11} After the Supreme Court of Ohio agreed to review the case in *Cincinnati School Dist. Bd. of Edn. v. State Bd. of Edn.*, 119 Ohio St.3d 1498, 2008-Ohio-5500, the parties settled their dispute and dismissed the appeal. *See Cincinnati School Dist. Bd. of Edn. v. State Bd. of Edn.*, 122 Ohio St.3d 557, 2009-Ohio-3628, ¶ 3. According to each of the complaints in this consolidated action, ODE paid CSD a total of \$5.9 million in settlement of the CSD litigation, and it paid Dayton City School District more than \$7.1 million in partial settlement of their claims in that case.

{¶ 12} In 2009, the General Assembly responded to the *Cincinnati* decision by enacting the following law as part of the biennial budget:

Except as expressly required under a court judgment not subject to further appeals, or a settlement agreement with a school district executed on or before June 1, 2009, in the case of a school district for which the formula ADM for fiscal year 2005, as reported for that fiscal year under division (A) of section 3317.03 of the Revised Code, was reduced based on enrollment reports for community schools, made under section 3314.08 of the Revised Code, regarding students entitled to attend school in the district, which reduction of formula ADM resulted in a reduction of foundation funding or transitional aid funding for fiscal year 2005, 2006, or 2007, no school district, except a district named in the court's judgment or the settlement agreement, shall have a legal claim for reimbursement of the amount of such reduction in foundation funding or transitional aid funding, and the state shall not have liability for reimbursement of the amount of such reduction in foundation funding or transitional aid funding.

Am.Sub.H.B. No. 1, Section 265.60.70.⁴

{¶ 13} In 2011, the Districts brought suit against ODE seeking a writ of mandamus ordering ODE to calculate and pay the Districts' School Foundation funds for FY 2005, FY 2006, and FY 2007 in accordance with law.⁵ In the alternative, the Districts sought a declaration that Ohio law requires ODE to calculate and pay the Districts' School Foundation payments for FY 2005, FY 2006, and FY 2007 on the basis of FY 2005 ADM

⁴ The General Assembly enacted identical language in the State Budget Provisions for 2011-2012 and 2013-2014. *See* Am.Sub.H.B. No. 153, Section 267.50.60; Am.Sub.H.B. No. 59, Section 263.410.

⁵ Each of the three Districts separately filed a petition in the common pleas court for their respective county. Each of the three cases were subsequently transferred to the Franklin County Court of Common Pleas and then consolidated into case No. 11 CV-11809 by order dated January 31, 2012.

as certified by the Districts' superintendents, and to calculate and pay for add-in students as required by law. The Districts further seek equitable restitution of the funds wrongfully recouped or withheld by ODE. In total, the complaint estimates the loss of funding to the Districts in FY 2006 and FY 2007 at \$23,630,000, not including losses due to the add-in claims.

{¶ 14} On April 27, 2012, ODE filed a motion for judgment on the pleadings pursuant to Civ.R. 12(C), arguing that the relevant provisions of the 2009 Budget Bill bar any claim for relief the Districts may have had against ODE. ODE set forth the additional grounds for judgment in its favor as to the claims of Individual Plaintiffs, arguing that they did not have standing to assert claims against ODE. On January 16, 2014, the trial court issued a judgment entry granting ODE's motion, in part, as to the claims of the Individual Plaintiffs. The trial court held that the Individual Plaintiffs did not have standing to assert a claim against ODE. However, the trial court denied ODE's motion as it relates to the 2009 Budget Bill. The trial court held that the relevant provision of the 2009 Budget Bill is void and unenforceable inasmuch as it retroactively abolished vested rights of the Districts in violation of the Ohio Constitution, Article II, Section 28.

{¶ 15} Although the trial court's decision did not dispose of all of the claims of the parties, the trial court expressly certified that there was "no just cause for delay." Accordingly, ODE sought an immediate review of the trial court's judgment by filing a notice of appeal to this court on February 7, 2014. The Individual Plaintiffs filed a cross-appeal.⁶

B. Assignments of Error on Appeal

{¶ 16} Defendants-appellants assign the following as error:

The Trial Court erred in holding that Sub. H. B. 1 (128th G.A.) § 265.60.70; Am. Sub. H. B. 153 (129th G.A.) §267.50.60; and Am. Sub. H.B. No. 59 (130th G.A.)§263.410 violate Art. II, § 28 of Ohio's Constitution. Doc. No. 141. pp. 16-23.

{¶ 17} For their cross-appeal, cross-appellants assign the following as error:

The trial court erred in dismissing the Individual Plaintiffs, on a motion for judgment on the pleadings, for lack of standing

⁶ On February 19, 2014, we sua sponte consolidated case Nos. 14AP-93, 14AP-94 and 14AP-95.

as the Complaint(s) allege that the Individual Plaintiffs suffered injuries resulting from ODE's unlawful actions.

C. Standard of Review

{¶ 18} A party may file a motion for judgment on the pleadings under Civ.R. 12(C), "[a]fter the pleadings are closed but within such time as not to delay the trial." *Franks v. Ohio Dept. of Rehab. & Corr.*, 95 Ohio App.3d 114, 2011-Ohio-2048, ¶ 5. In ruling on a motion for judgment on the pleadings, the court is permitted to consider both the complaint and answer. *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570 (1996). When presented with such a motion, a trial court must construe all the material allegations of the complaint as true, and must draw all reasonable inferences in favor of the nonmoving party. *Id.*, citing *Peterson v. Teodosio*, 34 Ohio St.2d 161, 165 (1973); *Whaley v. Franklin Cty. Bd. of Commrs.*, 92 Ohio St.3d 574, 581 (2001). The court will grant the motion if it finds, beyond doubt, that the plaintiff can prove no set of facts in support of the claim(s) that would entitle him or her to relief. *Pontious* at 570. A judgment on the pleadings dismissing an action is subject to a de novo standard of review in the court of appeals. *RotoSolutions, Inc. v. Crane Plastics Siding, L.L.C.*, 10th Dist. No. 13AP-1, 2013-Ohio-4343, ¶ 13, citing *Franks* at ¶ 5.

{¶ 19} With respect to the appeal, we note that an appellate court reviewing a declaratory judgment matter should apply a de novo standard of review in regard to the trial court's determination of legal issues in the case. *Nelson v. Mohr*, 10th Dist. No. 13AP-130, 2013-Ohio-4506, ¶ 9, citing *Arnott v. Arnott*, 132 Ohio St.3d 401, 2012-Ohio-3208, ¶ 1. An appellate court must also apply the de novo standard of review when examining the constitutionality of a statute. *Crigger v. Crigger*, 10th Dist. No. 04AP-288, 2005-Ohio-519, citing *Liposchak v. Admr., Bur. of Workers' Comp.*, 138 Ohio App.3d 368, 385 (10th Dist.2000), citing *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d 466, 471 (1993).

{¶ 20} As for the cross-appeal, we note that "[s]tanding is a threshold test that, if satisfied, permits the court to go on to decide whether the plaintiff has a good cause of action, and whether the relief sought can or should be granted to plaintiff." *Tiemann v. Univ. of Cincinnati*, 127 Ohio App.3d 312, 325 (10th Dist.1998) (abrogated in part on other grounds). Lack of standing challenges the capacity of a party to bring an action, not

the subject-matter jurisdiction of the court. *State ex rel. Ralkers, Inc. v. Liquor Control Comm.*, 10th Dist. No. 04AP-779, 2004-Ohio-6606, ¶ 35. When an appellate court is presented with a standing issue, it is generally a question of law, and we apply a de novo standard of review. *See Cleveland Elec. Illuminating Co. v. Pub. Util. Comm.*, 76 Ohio St.3d 521, 523 (1996).

D. Legal Analysis

1. Final Appealable Order

{¶ 21} Ordinarily a decision denying a motion for judgment on the pleadings is not a final appealable order. *Ohio Bur. of Workers' Comp. v. Shaffer*, 10th Dist. No. 13AP-67, 2013-Ohio-4570, ¶ 10. Thus, the first question for this court is whether the trial court's decision denying ODE's motion for judgment on the pleadings constitutes a final appealable order. In this regard, "[a] trial court's order is final and appealable only if it meets the requirements of R.C. 2505.02 and, if applicable, Civ.R. 54(B)." *Kopp v. Associated Estates Realty Corp.*, 10th Dist. No. 08AP-819, 2009-Ohio-2595, ¶ 6; *Denham v. New Carlisle*, 86 Ohio St.3d 594, 596 (1999), citing *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St.3d 86, 87 (1989). Pursuant to R.C. 2505.02(B)(1) "[a]n order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is * * * [a]n order that affects a substantial right in an action that in effect determines the action and prevents a judgment." A "[s]ubstantial right' means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." R.C. 2505.02(A)(1). In denying ODE's motion for judgment on the pleadings, the trial court ruled that the retroactive application of Am.Sub.H.B. No. 1, Section 265.60.70, violates Ohio Constitution, Article II, Section 28. Accordingly, even though the trial court denied ODE's motion for judgment on the pleadings, the trial court's ruling affects a substantial right.

{¶ 22} The requirements of Civ.R. 54(B), are as follows: "[w]hen more than one claim for relief is presented in an action * * * or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay." Although the trial court's judgment entry did not dispose of the Districts' claims for monetary and equitable relief, Civ.R. 54(B) permitted the trial court to enter a final

judgment "upon an express determination that there is no just reason for delay." As noted above, the trial court expressly made that determination.

{¶ 23} For the foregoing reasons, we find that the judgment of the trial court is a final appealable order and that we have jurisdiction of this appeal.

2. Retroactive Application of 2009 Budget Bill

{¶ 24} In ODE's sole assignment of error, ODE contends that the relevant provisions of the 2009 Budget Bill legislatively nullify the *Cincinnati* decision and that the Districts are legally barred from asserting any legal claims against the State for reimbursement of School Foundation funds for FY 2005 through FY 2007. The Districts argue that the relevant provisions of the 2009 Budget Bill are void and unenforceable because they violate the constitutional prohibition against retroactive laws.

{¶ 25} Ohio Constitution, Article II, Section 28, states that "[t]he General Assembly shall have no power to pass retroactive laws." The trial court, relying on the first district decision in *Cincinnati*, determined that the Districts had a vested right to School Foundation funding pursuant to the Formula ADM as determined by the October Count, and that the provision in the 2009 Budget Bill that would abrogate the Districts' right to such funding, violated the constitutional prohibition against retroactive laws.

{¶ 26} In making the determination whether retroactive application of a statute violates the Retroactivity Clause of State Constitution, a court is required to engage in a two-step analysis. *State v. White*, 132 Ohio St.3d 344, 2012-Ohio-2583, ¶ 27, *reconsideration denied*, 132 Ohio St.3d 1535, 2012-Ohio-4381, *cert. denied*, *White v. Ohio*, 133 S.Ct. 1495. "First, the court must determine whether the General Assembly intended that the statute apply retroactively." *Id.* Second, "[i]f the General Assembly has expressly indicated its intention that the statute apply retroactively, the court must determine whether the statute is remedial, in which case retroactive application is permitted, or substantive, in which case retroactive application is forbidden." *Id.* There is no question in this case that the General Assembly intended retroactive application of the relevant provisions of the 2009 Budget Bill inasmuch as the statute expressly applies to school funding for FY 2005 through FY 2007. Thus, the question for this court is whether the nature of the statute is remedial or substantive.

{¶ 27} A statute is "substantive," for purposes of retroactivity analysis, when it impairs or takes away vested rights; affects an accrued substantive right; imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction; creates a new right out of an act that gave no right and imposed no obligation when it occurred; creates a new right; or, gives rise to or takes away the right to sue or defend actions at law. *Id.* at ¶ 35. In contrast, "[r]emedial laws are those that substitute a new or different remedy for the enforcement of an accrued right, as compared to the right itself, * * * and generally come in the form of 'rules of practice, courses of procedure, or methods of review.'" *State ex rel. Kilbane v. Indus. Comm.*, 91 Ohio St.3d 258, 260 (2001). A purely remedial law "does not violate Section 28, Article II of the Ohio Constitution, even when it is applied retroactively." *Beilat v. Beilat*, 87 Ohio St.3d 350, 2000-Ohio-451.

a. Vested right analysis

{¶ 28} A vested right is "a completed, consummated right for present or future enjoyment; not contingent; unconditional; absolute." *Black's Law Dictionary* 1557 (9th Ed.2011). The Supreme Court of Ohio provided further insight into what it means for someone to have a "vested" right in *State ex rel. Jordan v. Indus. Comm.*, 120 Ohio St.3d 412, 2008-Ohio-6137, ¶ 9:

A "vested right" can "be created by common law or statute and is generally understood to be the power to lawfully do certain actions or possess certain things; in essence, it is a property right." *Washington Cty. Taxpayers Assn. v. Peppel* (1992), 78 Ohio App.3d 146, 155, 604 N.E.2d 181. It has been described as a right "which it is proper for the state to recognize and protect, and which an individual cannot be deprived of arbitrarily without injustice." *State v. Muqdad* (2000), 110 Ohio Misc.2d 51, 55, 744 N.E.2d 278. A vested right is one that "'so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent.'" *Harden v. Ohio Atty. Gen.*, 101 Ohio St.3d 137, 2004-Ohio-382, 802 N.E.2d 1112, ¶ 9, quoting *Black's Law Dictionary* (7th Ed.1999) 1324. A right also cannot be characterized as vested "unless it constitutes more than a 'mere expectation or interest based upon an anticipated continuance of existing laws.'" *Roberts v. Treasurer* (2001), 147 Ohio App.3d 403, 411, 770 N.E.2d 1085, quoting *In re Emery* (1978), 59 Ohio App.2d 7, 11, 13 O.O.3d 44, 391 N.E.2d 746.

{¶ 29} ODE contends that the 1938 opinion of the court in *State ex rel. Outcalt v. Guckenberger*, 134 Ohio St. 457 (1938) requires us to find that the Districts' rights to School Foundation funding at the statutory rate is contingent or conditional in nature. We disagree.

{¶ 30} In *Outcalt*, the General Assembly had passed the Whittemore Acts under which a delinquent taxpayer, by paying all current taxes and agreeing to discharge the delinquent taxes in installments, would be relieved of the payment of past penalties and interest. The Hamilton County Prosecutor brought an action against the County Auditor, seeking a court order compelling the County Auditor to charge and collect penalties and interest under the prior law. The Supreme Court of Ohio held that the provisions of the Acts, which authorize the remission of the penalties, interest and other charges on unpaid delinquent taxes, do not violate the retroactivity clause. *Id.* at 461. ODE argues that, employing the logic of the *Outcalt* case, the retroactivity clause does not prevent the General Assembly from enacting legislation which diverts unpaid School Foundation funds.

{¶ 31} However, as the Districts have pointed out, the court in *Outcalt* also held that penalties previously paid in discharging tax obligations cannot be refunded through legislative enactment because, after payment into the public treasury, they become a part of the taxes collected and distributed to the subdivisions of the state. *Id.* at 459. Here, the School Foundation funds at issue are part of ODE's general revenue fund; a fund comprised of property taxes previously levied and collected along with lottery commission profits. All that remains for ODE to do is to distribute the funds to the Districts pursuant to the statutory formula. In short, School Foundation funds awaiting distribution are not the legal equivalent of uncollected taxes, penalties and interest. Consequently, to the extent that the *Outcalt* decision applies to the facts of this case, it arguably supports the position taken by the Districts.

{¶ 32} ODE also relies on the 1933 opinion of the Supreme Court of Ohio in *Cleveland v. Zangerle*, 127 Ohio St. 91 (1933), in support of its contention that the Districts' right to School Foundation funds is not a vested right. In *Zangerle*, the city of Cleveland sought an order enjoining Cuyahoga County from distributing Intangible Tax Act revenues to public libraries and township park districts pursuant to newly enacted Am.Sub.S.B. No. 239. The General Assembly had enacted the Intangible Tax Law in

January 1, 1933, but the Supreme Court of Ohio ruled that certain "distributive features" of the Act were unconstitutional. *Id* at 92, citing *Friedlander, County Treas., v. Gorman Pros. Atty.*, 126 Ohio St. 163 (1933). The General Assembly responded by enacting new legislation requiring the distribution of Intangible Tax Act revenue to libraries and parks. After much of the Intangible Tax revenue had been collected, but before any of the revenue was distributed, the city of Cleveland sought a court order compelling Cuyahoga County to distribute the revenue according to prior law. The city of Cleveland alleged that Am.Sub.S.B. No. 239 violated Ohio Constitution, Article II, Section 28. The Supreme Court of Ohio concluded that the enactment was not unconstitutionally retroactive for the following reason:

No governmental subdivision of the state has any vested right, at least until distribution is made, in any taxes levied and in the process of collection. Until such distribution is made, the Legislature of Ohio is fully competent to divert the proceeds among those local subdivisions as it deems best to meet the emergencies which it finds to exist. So far as any political subdivision of the state is concerned, there can be no vested right, although a case might arise where private interests might intervene and be so affected as to give rise to a vested interest. The provisions of Amended Senate Bill No. 239, so far as they relate to the future distribution of the proceeds of the taxes, are not retroactive, but prospective, in character, and it is not violative of section 28 of article II of the Constitution; nor can it be said that the city had any contractual obligation with the state which was impaired by the passage of Amended Senate Bill No. 239.

(Emphasis added.) *Id.* at 92-93.

{¶ 33} ODE seizes upon the highlighted language in the *Zangerle* opinion in arguing that the Districts' right to School Foundation funding at the level dictated by Formula ADM never "vested," because ODE chose to distribute School Foundation funds pursuant to a different formula in FY 2005 through FY 2007. The Districts argue that their right to School Foundation funding at the level dictated by the General Assembly vested when ODE paid some of the Districts' FY 2005 School Foundation funding pursuant to the Formula ADM, before making the decision to recoup the alleged overpayment.

{¶ 34} ODE acknowledges that it initially paid a portion of the Districts' FY 2005 School Foundation funding pursuant to the Formula ADM as determined by the October Count. There is no question that ODE subsequently determined that there had been an overpayment to the Districts and that ODE recouped those funds out of future payments beginning in FY 2006. The *Cincinnati* case holds that such recoupment is unlawful.

{¶ 35} The Districts argue that under the rule of law in *Zangerle*, their right to the alleged overpayment of School Foundation funds vested when the funds were initially paid. The Districts argue that the 2009 Budget Bill, which absolves the State of Ohio from any liability to the Districts for the sums unlawfully recouped by ODE, effectively abolished a vested right. According to the Districts, it follows that the 2009 legislation violates the retroactivity clause of the Ohio Constitution. We disagree.

{¶ 36} The problem with the Districts' argument is that a statutory right cannot be characterized as vested "unless it constitutes more than a 'mere expectation or interest based upon an anticipated continuance of existing laws.'" *Roberts v. Treasurer*, 147 Ohio App.3d 403, 411 (2001), quoting *In re Emery*, 59 Ohio App.2d 7, 11 (1st Dist.1978). Indeed, the Supreme Court of Ohio has stated "that there is no vested right in an existing statute that will preclude the General Assembly from changing it." *State ex rel. Kenton City School Dist. v. State Bd. of Edn.*, 174 Ohio St. 257 (1963). In our view, the fact that ODE had the statutory right to control all distributions of School Foundation payments to the Districts in a given fiscal year, including the authority to recoup overpayments out of future distributions, requires us to conclude that the Districts' statutory right to School Foundation funds is conditional or contingent rather than absolute or vested.

{¶ 37} Moreover, even if we were to hold that the 2009 Budget Bill is unconstitutionally retroactive as it pertains to the funds that were paid to the Districts but unlawfully recouped, the Districts also seek to recover School Foundation funds that remained unpaid by ODE in FY 2005 through FY 2007. As noted above, the Districts contend that the recalculation of their ADM in FY 2005 resulted in an additional loss of School Foundation funds in the remainder of FY 2005 and over the next two fiscal years.

{¶ 38} In short, we cannot agree with the Districts' contention that the 2009 Budget Bill is unconstitutionally retroactive because it impairs or takes away a vested right.

b. Substantive Right analysis

{¶ 39} Even though we agree with ODE that the Districts' right to the disputed School Foundation funds was not a vested right, a statute may still be "substantive" in nature, for purposes of a constitutional retroactivity, if it affects an accrued substantive right. *Cook* at ¶ 35. Indeed, the Districts have cited to the decision of the Supreme Court of Ohio in *Kenton*, in support of their contention that the right to School Foundation funding at the statutory level is a substantive right that accrued under existing law. The Districts argue that the 2009 Budget Bill is unconstitutionally retroactive because it impairs an accrued substantive right. We agree.

{¶ 40} The *Kenton* case addressed a public school district's rights under the version of R.C. 3317.02, in effect in 1960, which guaranteed a school district certain minimum payments for three years in the event of a consolidation with another school district. In 1960, the Kenton City School District qualified for such guarantees by virtue of its consolidation with another district. However, in 1961, the General Assembly amended the statute in a manner that disqualified Kenton from receiving future guarantees.

{¶ 41} In *Kenton*, the court reiterated the general rule: "[t]hat there is no vested right in an existing statute which will preclude the General Assembly from changing it." *Id.* at 260. However, having made that statement, the court went on to determine the true nature of the district's "right" to guaranteed funding under the 1960 law. In so doing, the court stated:

To be guaranteed a minimum amount of money would be a substantive right, whether the guarantee is to a political subdivision or to an individual.

Here we have a statute which guaranteed a school district that in the event of a consolidation with another school district there would be a certain minimum payment to the consolidated district for a period of three years. Inasmuch as the statute was in force at the time of the consolidation in the present case, a right accrued to the consolidated district which, if the statute had not been amended, could have beyond question been enforced by a writ of mandamus. There was nothing discretionary about such provision.

Id. at 261-62.

{¶ 42} Applying the logic of the *Kenton* case herein, we find that the Districts had a substantive right to School Foundation funds that accrued under the statutory law in

place for FY 2005 through FY 2007. The Districts seek to enforce their accrued statutory right in this litigation. The *Cincinnati* decision holds that ODE does not have discretion to deviate from the Formula ADM in determining public school funding and that the right of a public school district to such funding is enforceable by a writ of mandamus. Accordingly, to the extent that the 2009 Budget Bill nullifies the Districts' statutory right to School Foundation funding in FY 2005 through FY 2007, the Budget Bill affects a substantive right belonging to the Districts. As such, the relevant portion of the 2009 Budget Bill is unconstitutionally retroactive in violation of the Ohio Constitution, Article II, Section 28.

{¶ 43} ODE attempts to distinguish *Kenton* on the basis that it addressed the amendment of a statute whereas the General Assembly, in this case, enacted separate legislation without amending or repealing prior law. In terms of the retroactivity clause of the Ohio Constitution, this is a distinction without a difference.

{¶ 44} In the context of statutory rights, the retroactivity analysis under R.C. 1.58(A)(2) mirrors the constitutional retroactivity analysis under Ohio Constitution, Article II, Section 28. *Zempter v. Ohio State Grange Mut. Ins. Co.*, 4th Dist. No. 95-CA-2326 (Sept. 6, 1995). Indeed, R.C. 1.58(A)(2) prohibits the General Assembly from amending a statute in such a way as to affect substantive rights accrued under the prior version of the law. *Id.*⁷ Although R.C. 1.58(A)(2) does not apply in this case because the 2009 Budget Bill did not expressly amend the relevant school funding laws, the 2009 Budget Bill is unconstitutionally retroactive, nonetheless, because it affects a substantive right of the Districts that accrued under statutory law. As noted above, the *Kenton* case is instructive because it establishes that a public school district's right to School Foundation funding under existing law is a substantive right. Because the statutory right is substantive in nature, the retroactivity clause in the Ohio Constitution, Article II, Section 28 prohibits the General Assembly from enacting a law that reaches back in time to take away that right.

⁷R.C. 1.58 provides in relevant part as follows:

"(A) The reenactment, amendment, or repeal of a statute does not, except as provided in division (B) of this section: (1) Affect the prior operation of the statute or any prior action taken thereunder; (2) Affect any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred thereunder * * *"

{¶ 45} ODE next contends that the Retroactivity Clause of the Ohio Constitution does not apply in this case because the Districts are political subdivisions of this State and, consequently, the General Assembly is empowered to retroactively waive or impair their rights without violating the Ohio Constitution, Article II, Section 28. In making this argument, ODE relies, in large part, on a decision of the Supreme Court of Missouri in *Savannah R–III School Dist. v. Public School Retirement Sys. of Missouri*, 950 S.W.2d 854 (Mo.1997).

{¶ 46} In *Savannah R–III*, a group of retired school teachers sought to block application of an amendment to the statute governing contributions to state teachers' retirement system. *Id.* at 857. The amended law nullified a prior decision in a class action brought by school districts against the retirement system that required the retirement system to refund certain past contributions. *Id.* In ruling that the amendment was constitutional, the Supreme Court of Missouri reasoned that Missouri's constitutional ban on retroactive laws was intended to protect citizens not political subdivisions, and that the Missouri legislature may pass laws waiving the rights of the state or its political subdivisions. *Id.* at 858, citing Missouri Constitution, Article I, Section 13. Therein, the court stated:

Because the retrospective law prohibition was intended to protect citizens and not the state, the legislature may constitutionally pass retrospective laws that waive the rights of the state. All of the representative plaintiffs are school districts. "School districts are bodies corporate, instrumentalities of the state established by statute to facilitate effectual discharge of the General Assembly's constitutional mandate to establish and maintain free public schools * * *" As "creatures of the legislature," the rights and responsibilities of school districts are created and governed by the legislature. *Id.* Hence, the legislature may waive or impair the vested rights of school districts without violating the retrospective law prohibition. The analysis of this constitutional claim would be different had any one of the named parties been a teacher.

(Citations omitted.)(Emphasis added.)

{¶ 47} ODE argues that we should adopt the reasoning of the Supreme Court of Missouri in *Savannah R–III* in ruling on the retroactivity issue in this case. However, the pertinent case law in Ohio, including *Zangerle* and *Outcalt*, holds that the retroactivity

clause prohibits the General Assembly from enacting laws that retroactively impair vested rights of political subdivisions. *See Hamilton Cty. Commrs. v. Rosche*, 50 Ohio St. 103 (1893); *State ex rel. Crotty v. Zangerle, Aud.*, 133 Ohio St. 532 (1938). Thus, Ohio law is directly at odds with Missouri law on this issue. Similarly, as the Supreme Court stated in *Kenton*, a public school district's guaranteed statutory right to School Foundation funding is an accrued substantive right "whether the guarantee is to political subdivision or an individual." *Id.* at 262. Thus, to the extent that *Savannah R-III* exemplifies Missouri's approach to the issue of constitutional retroactivity, Ohio has not adopted that approach in reviewing similar issues under Ohio Constitution, Article II, Section 28.⁸

{¶ 48} Finally, we disagree with ODE's contention that a victory by the Districts in this litigation comes at the expense of Ohio Constitution, Article VI, Section 2, which provides that "the General Assembly shall make such provisions * * * [to] secure a thorough and efficient system of common schools." Contrary to ODE's assertion, the question whether it is more thorough and efficient to use the CSADM in determining public school funding is not a question raised in this litigation.⁹ Moreover, the *Cincinnati* decision represents Ohio law on the statutory school funding issue in this case.

{¶ 49} In the *Cincinnati* decision, the first district held that ODE's conduct in using the CSADM to adjust Formula ADM violated the only methodology authorized by the General Assembly for determining School Foundation funding for public school districts in Ohio. *Id.* at ¶ 23-29. The clear purpose of the 2009 Budget Bill is to legislatively nullify the Districts cause of action against the State for reimbursement of School Foundation funds either wrongfully recouped or withheld by ODE in FY 2005 through FY 2007. Because the legislation purports to take away the Districts accrued substantive right to School Foundation payments in FY 2005 through FY 2007, the relevant provision in the 2009 Budget Bill violates Ohio Constitution, Article II, Section 28.

⁸ We note that at least one appellate district in Missouri has declined to extend *Savannah R-III* to a public school district's claim against the State Legal Expense Fund. *P.L.S. ex rel. Shelton v. Koster*, 360 S.W.3d 82005, 813, (Mo.App.2011) "[A] school district is not an 'agency of the state' in the same way that we understand a department or a division of the machinery of state government to be." *Id.* at 819-20.

⁹As the first district noted in the *Cincinnati* decision, when the General Assembly amended the relevant sections of the Revised Code in 2007, it chose "not to amend the definition of Formula ADM or to alter the two different reporting and payment systems for Formula ADM and CSADM." *Id.* at ¶ 28.

{¶ 50} Based upon the foregoing, we hold that the trial court did not err when it denied ODE's motion for judgment on the pleadings, and we overrule ODE's sole assignment of error.

E. Cross-appeal

{¶ 51} The trial court granted judgment on the pleadings in favor of ODE as to the claims asserted by the Individual Plaintiffs in this case based upon its determination that the Individual Plaintiffs did not have standing to assert the claims alleged in the complaint. We agree with the trial court.

{¶ 52} In *League of United Latin Am. Citizens v. Kasich*, 10th Dist. No. 10AP-639, 2012-Ohio-947, we set forth the general standing rules as follows:

Under the doctrine of standing, a litigant must have a personal stake in the matter he or she wishes to litigate. *Tiemann* at 325. Standing requires a litigant to have " 'such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for the illumination of difficult * * * questions.' " *Id.* at 325, quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962). In order to have standing, a plaintiff must demonstrate some injury caused by the defendant that has a remedy in law or equity. *Id.* The injury is not required to be large or economic, but it must be palpable. *Id.* Furthermore, *the injury cannot be merely speculative, and it must also be an injury to the plaintiff himself or to a class. Id. An injury that is borne by the population in general, and which does not affect the plaintiff in particular, is not sufficient to confer standing. Id., citing Allen v. Wright*, 468 U.S. 737 (1984). *See also State ex rel. Masterson v. Ohio State Racing Comm.*, 162 Ohio St. 366, 368 (1954) ("private citizens may not restrain official acts when they fail to allege and prove damage to themselves different in character from that sustained by the public generally."). (Citation omitted.)

(Emphasis added.) *Id.* at ¶ 21.¹⁰

{¶ 53} At the outset, we note that the primary argument made by Individual Plaintiffs in this case is that they have standing to bring this action on their own behalf, rather than as representatives of the Districts. In this regard, we note that "a litigant must

¹⁰ *Tiemann v. Univ. of Cincinnati*, 127 Ohio App.3d 312, 325 (10th Dist.1998) (abrogated in part on other grounds).

assert its own rights instead of the claims of third parties, and third-party standing is not favored." *Settlers Bank v. Burton*, 4th Dist. No. 12CA36, 2014-Ohio-335, citing *State v. Sturbois*, 4th Dist. No. 10CA48, 2011-Ohio-2728, ¶ 33. "Third-party standing may, however, be granted when a claimant (1) suffers its own injury in fact, (2) possesses a sufficiently close relationship with the person who possesses the right, and (3) shows some hindrance to seeking relief that stands in the way of the person possessing the right." *Id.*

{¶ 54} Even if we were to find that the Individual Plaintiffs have alleged facts which permit an inference of an injury in fact and, even though the allegations of the petition establish a close relationship between the Individual Plaintiffs and the Districts in which they live and work, we have previously determined that the 2009 Budget Bill does not hinder the Districts' right to seek relief. Consequently, in order for the Individual Plaintiffs to have standing in this case, they must allege sufficient facts which, if taken as true, establish a personal stake in the outcome of this litigation.

{¶ 55} In our view, the facts alleged in the petition fail to establish damage to the Individual Plaintiffs that is different in character from that sustained by others living in the school district. In each of the three cases consolidated herein, the Individual Plaintiffs allege that: they are Ohio taxpayers; that they live in one of the districts, that they own real property within that district; and that they are parents of children who attend public schools within that district. The Individual Plaintiffs in the Dayton City School District additionally allege that the district employs them as public school teachers. Finally, Christopher Sanders, one of the Individual Plaintiffs in the Cleveland City School District, alleges that he is a "certified physical education teacher who is currently employed by Cleveland as an instructional aid and not as a physical education teacher due to reduction in force and school closings in the district." (R. 53.)

{¶ 56} In *Brown v. Columbus City School Dist. Bd. of Edn.*, 10th Dist. No. 08AP-1067, 2009-Ohio-3230, taxpayers and residents of the City brought suit against ODE seeking a declaration that the current per-pupil school funding system was unconstitutional. In affirming the trial court's determination that the taxpayers did not have standing to assert claims against ODE we stated:

As for private standing, appellants clearly have no private standing in this matter. Appellants have no direct personal

stake in the outcome of the controversy. Appellants have not suffered and are not threatened with any direct and concrete injury in a manner or degree different from that suffered by the public in general. Appellants alleged only that they were taxpayers in the city of Columbus. Appellants do not allege they are students in the Columbus City Schools system or are parents of students in the school system. If the merits of their action were to be unsuccessful, they could show no personal harm or damage that would result as separate from any harm suffered by the general taxpaying public.

Id. at ¶ 13.

{¶ 57} Under the *Brown* decision, it is clear that the Individual Plaintiffs do not have standing based solely upon their status as taxpayers who own real property within the Districts. The Individual Plaintiffs argue that the *Brown* decision stands for the proposition that taxpayers in a public school district have standing to sue ODE if they allege that they are parents of public school students in the District. While we agree that a taxpayer who has a child attending school in the District may have a greater interest in public school funding issues than the general public, this fact alone does not tip the scales in favor of the Individual Plaintiffs.

{¶ 58} While the Individual Plaintiffs in this case have alleged that there have been budget cuts and school closings in their respective Districts, as the trial court noted, none of the Individual Plaintiffs have alleged that their children have been denied specific educational opportunities due to ODE's failure to fund their district at the statutory rate or that they lost their jobs as a result of ODE's conduct as alleged in the complaint. Although Individual Plaintiff Christopher Sanders claims that he is "not as a physical education teacher due to reduction in force and school closings in the district," Sanders does not allege that he lost a position as a physical education teacher due to a reduction in force and school closings in the district, nor does he state that the district offered him such a position but did not hire him due to a reduction in force and school closings in the district.

{¶ 59} Without additional operative facts which would support a reasonable inference that ODE's conduct as alleged in the complaint caused or threatened the Individual Plaintiff's with a specific harm different than that suffered by the public in general, the allegations are nothing more than unsupported legal conclusions. As noted

above, an injury in fact "cannot be merely speculative." *League of United Latin Am. Citizens* at ¶ 21, citing *Allen v. Wright*, 468 U.S. 737 (1984).

{¶ 60} Unsupported legal conclusions are not admitted when determining a motion for judgment on the pleadings. See *JP Morgan Chase Bank v. Belden Oak Furniture Outlet, Inc.*, 5th Dist. No. 2010 CA 00049, 2010-Ohio-4444; *Amrhein v. Telb*, 6th Dist. No. L-06-1170, 2006-Ohio-5107. Accordingly, we hold that the trial court did not err when it granted judgment on the pleadings in favor of ODE as to the claims asserted by the Individual Plaintiffs. Accordingly, we overrule the sole assignment of error set forth in the cross-appeal.

E. Conclusion

{¶ 61} Having overruled appellants' sole assignment of error and having overruled cross-appellants' sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and BROWN, JJ., concur.

I. BACKGROUND

Plaintiffs filed petitions for a writ of mandamus, or alternatively, for declaratory judgment regarding the calculation of School Foundation Payments to the schools for fiscal years 2005 through 2007. Plaintiffs request that the Court order Defendants to recalculate the funding owed to the schools in order to comply with state law. Alternatively, Plaintiffs request that the Court declare that Defendants unlawfully calculated and reduced the payments made to the schools for those years.

Plaintiffs are comprised of three school district boards, Dayton City, Cleveland Metropolitan, and Toledo City, along with a number of individuals who have children in the school districts or who are employees of the school districts. In Plaintiff Dayton City's complaint, the two individual plaintiffs bring their action in their capacity as individuals and as parents and "next friends" of children enrolled in the Dayton City school system. (Dayton Compl. at Intro.) The four individual plaintiffs from Cleveland Metropolitan also appear to be bringing their action in their capacity as individuals and parents of children enrolled in the district. (Cleveland Compl. ¶3.) All four are also employed with the district in some capacity as administrators, a principal, or as an instructional aid. (Cleveland Compl. ¶3.) Plaintiff Sanders alleges that she is currently employed as an instructional aid and not as a physical education teacher due to a reduction in force and school closings in the district because of the reduction in funding. (Cleveland Compl. ¶3.) Finally, three individuals from the Toledo City school district assert claims against Defendants in their capacity as individuals and parents of students enrolled in the school district. (Toledo Compl. ¶¶3-4.) All of the individual plaintiffs appear to suggest that they have standing to bring their claims as citizens, tax payers, and employees of the school district. (Dayton Compl. ¶¶3-4; Cleveland Compl. ¶3; Toledo Compl. ¶¶3-4.)

In Ohio, school districts are funded primarily through local tax revenue and state funding. State funding is determined and distributed under the School Foundation Program, administered by Defendants. That funding is determined, in part, by the number of students enrolled in the district, known as the Formula ADM. The schools report both the number of students enrolled in the district school and the number of students eligible to enroll in the district school but who have elected to enroll elsewhere, such as in a community school.¹ (Toledo Compl. ¶12.)² The combination of those two numbers makes up the Formula ADM. According to Plaintiffs, the school districts are required to report their attendance numbers for the year in October. (Toledo Compl. ¶13.) After October, the enrollment numbers are not changed except that the district must adjust numbers to reflect students who are enrolled in community schools but who were not included in the district's original count (called "add-in students"). (Toledo. Compl. ¶¶13-14.) The School Foundation Program also contains guarantee provisions that provide a minimum level of funding to a district regardless of the Formula ADM. (Toledo Compl. ¶15.)

Ohio's community schools also receive state funding based upon the number of students who attend each school. (Toledo Compl. ¶17.) The community schools self-report their attendance numbers to the state through an electronic submission form known as CSADM. (Toledo Compl. ¶19.) Plaintiffs allege that for fiscal year 2005, the community schools had the ability to adjust their attendance numbers, and even delete student records, throughout the year, not just in October. (Toledo Compl. ¶¶20-23.) When a student attends a community school instead of his district's public school, the funds attributable to that student are deducted from the School Foundation funds that the district receives and are instead given to the community school. (Toledo Compl. ¶18.)

¹ Community schools are more commonly known as charter schools.

² The general allegations in the three complaints are largely similar. Unless specified, the Court's citation to one specific complaint represents the allegations asserted in all three complaints.

For fiscal year 2005, Plaintiffs allege that Defendants improperly recalculated their School Foundation funding after substituting the enrollment data received from the community schools for that submitted by the district. (Toledo Compl. ¶32.) Due to the discrepancy between the numbers reported by the community schools and the district, which totaled approximately 561 students, Defendants decided that the Toledo City school district was overpaid over \$3.5 million and began deducting amounts from the district's School Foundation payments in order to recoup the overpayment. (Toledo Compl. ¶¶34-39.) Defendants reduced Dayton City school district's enrollment by 688 students, which resulted in Defendants' determination that they overpaid the district nearly \$4.8 million. (Dayton Compl. ¶¶37-38.) Defendants reduced Cleveland Metropolitan's enrollment by 575 students, resulting in an apparent overpayment of over \$1.8 million. (Cleveland Compl. ¶¶27-38.) Likewise, Plaintiffs contend that Defendants failed to adjust and recalculate enrollment numbers to account for add-in students, resulting in an additional loss of funding. (Toledo Compl. ¶¶41-43; Dayton Compl. ¶¶41-43; Cleveland Compl. ¶¶41-43.)

For fiscal years 2006 and 2007, Plaintiffs' funding was based partially on the guarantee provisions. (Toledo Compl. ¶44; Dayton Compl. ¶44; Cleveland Compl. ¶44.) Those provisions, however, base the amount of the guarantee in part on each district's fiscal year 2005 payments. (Toledo Compl. ¶44.) Due to the allegedly improper reduction in the fiscal year 2005 funding and Defendants' failure to count add-in students, Plaintiffs contend that their funding for fiscal years 2006 and 2007 was too low. Plaintiff Toledo City alleges underpayments totaling nearly \$4.2 million each year for fiscal years 2006 and 2007. (Toledo Compl. ¶¶46-47.) Plaintiff Dayton City alleges underpayments of nearly \$4.5 million for fiscal year 2006 and nearly \$1.5 for fiscal year 2007. (Dayton Compl. ¶¶46-47.) Plaintiff Cleveland Metropolitan

alleges underpayments of over \$4.6 million each year for fiscal years 2006 and 2007. (Cleveland Compl. ¶¶46-47.)

The relevant statutes in effect for the period of time at issue in Plaintiffs' complaints are R.C. 3317.022, 3317.02, and 3317.03.

II. DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

On April 27, 2012, Defendants filed a Motion for Judgment on the Pleadings on all of Plaintiffs' claims against them. Defendants admit that they recalculated the districts' Formula ADM based upon the community schools' CSADM reports, which resulted in reduced state funding for fiscal year 2005. (MJP at 3.) Defendants also admit that the funding for fiscal years 2006 and 2007 were reduced due to the fiscal year 2005 ADM. (MJP at 3.)

Defendants contend that the plaintiff school districts' claims are barred by legislative enactment. (MJP at 3-4, 8-9, 10-12.) The Ohio 2009 Budget Bill addressed districts whose 2005 ADM, and therefore funding, was reduced based on enrollment reports from community schools. It provides that no such district "shall have a legal claim for reimbursement ... and the state shall not have liability for ... such reimbursement." Am. Sub. H.B. 1 (128th G.A.) §265.60.70. The 2011 Budget Bill includes the same provision. Am. Sub. H.B. 153 (129th G.A.) §265.60.70. Defendants contend that Plaintiffs' claims based upon failure to recalculate enrollment numbers based upon add-on students are also precluded by this legislative enactment. The add-ins are reported through the same methods as the community schools general enrollment reports. Failure to account for these students results in a reduction in the ADM based upon enrollment reports, thus making these claims covered by the budget bills. (MJP at 11-12.)

Not only are the districts' claims barred, but Defendants also contend that the budget bills insulate the State from any liability on all Plaintiffs' claims. (MJP at 5, 14-15.) The budget bills

provide that “the state shall not have liability for reimbursement of the amount of such reduction in ... funding.” Am. Sub. H.B. 1 (128th G.A.) §265.60.70.

Additionally, Defendants argue that the individual plaintiffs’ claims fail because such plaintiffs lack standing. The individual plaintiffs, Defendants contend, are not the real parties in interest in this action as there is nothing in the relevant statutes underlying their claims that would provide individual standing to bring this action. (MJP at 12-13.)

A. Plaintiffs’ Opposition Memorandum

Plaintiffs filed a joint memorandum in opposition to the Motion for Judgment on the Pleadings. Plaintiffs contend that the provisions in the uncodified budget bills are unconstitutionally retroactive and cannot apply to extinguish their vested rights. (Memo. Opp. at 4-5, citing Ohio Const., Art. II, Sec. 28, and *Bielat v. Bielat*, 87 Ohio St. 3d 350, 353 (2000).) Because the budget bills purport to terminate a cause of action to enforce a right that already vested, Plaintiffs argue that the bills are substantive in nature. (Memo. Opp. at 5-7.) As such, their retroactive application is unconstitutional.

Next, Plaintiffs argue that the provisions in the budget bills violate the Uniformity Clause in Ohio’s Constitution. (Memo. Opp. at 8, citing Ohio Const., Art. II, Sec. 26.) Specifically, Plaintiffs argue that the bills do not operate uniformly throughout the state because they create two categories of school districts while eliminating any possibility that a particular school district can change its categorization. (Memo. Opp. at 9.) The two categories of school districts are (1) districts that remain entitled to recover funding unlawfully withheld in fiscal years 2005 through 2007, and (2) districts that are not allowed to challenge such funding. (Memo. Opp. at 9.)

In addition, Plaintiffs contend that the budget bills do not purport to bar Plaintiffs’ add-in claims. (Memo. Opp. at 10.) Plaintiffs point to the bills’ language precluding claims based upon

a *reduction* in funding as a result of substituting the community school enrollment reports for the districts' reports. Plaintiffs' add-in claims, however, challenge Defendants' failure to *increase* a district's ADM due to add-in students. (Memo. Opp. at 10.) Likewise, Plaintiffs contend that the bills only discuss funding reductions under R.C. 3317.03(A), whereas the provision regarding add-in figures is contained in R.C. 3317(F)(3). (Memo. Opp. at 10.)

The individual plaintiffs argue that they have standing because of their particularized interests and because of the direct harm they have suffered as parents, students, and employees of the plaintiff school districts. In particular, the individual plaintiffs allege that they have suffered direct harm in the form of (1) diminution of real property values and additional real estate taxes due to the decrease in funding, (2) reassignment to lower-paying positions, positions not in their respective specialties, and diminished operational resources, and (3) as parents and on behalf of their children, loss of funds for education. (Memo. Opp. at 2-3.)

Finally, Plaintiff Dayton City argues that the Dayton's partial settlement excludes its claims from falling under the preclusion provisions in the budget bills. (Memo. Opp. at 12.) The budget bills include an exception for those claims "expressly required under ... a settlement agreement with a school district executed on or before June 1, 2009...." Dayton City entered into a partial settlement agreement with the State before June 1, 2009. (Dayton Compl. ¶48.) Dayton City contends that the agreement specifically provides that it has the right to legally pursue any claims that the parties were not able to settle. (Memo. Opp at 12.)

B. Defendants' Reply

In their reply, Defendants respond that the budget bills are not unconstitutionally retroactive because the districts do not have a vested interest in public funds until they actually receive such funds. (Reply at 4, citing *State ex rel. Columbus v. Thatcher*, 57 N.E. 2d 305, 312

(10th Dist. 1941.) Furthermore, Defendants argue, the budget bills have uniform application because they apply to all districts that lost funding due to ADM adjustments. (Reply at 5-6.) According to Defendants, it is sufficient that a law that is reasonable and nonarbitrary operates uniformly on all the districts that qualify to satisfy the Constitution's Uniformity Clause; uniform application as to all districts is not required. (Reply at 6, citing, inter alia, *Austintown Twp. Bd. of Trustees v. Tracy*, 76 Ohio St. 3d 353, 356 (1996); *Miller v. Korn*s, 107 Ohio St. 287, 305 (1923).) Defendants provide two reasons why the legislation is reasonable, despite creating a distinction among districts: (1) to eliminate fiscal uncertainty from claims from districts with adjusted ADMs; and (2) to ratify the Ohio Department of Education's decision to treat the community schools' enrollment figures as more accurate than the districts' figures. (Reply at 7.)

Next, Defendants argue that the individual plaintiffs, who may have suffered a sufficient injury to meet basic standing requirements, cannot also show that they meet the additional requirement of being a real party in interest. (Reply at 8-9.) According to Defendants, the Court must look to the substantive law creating the rights being sued upon to determine if a particular party is the real party in interest. (Reply at 9, citing *Shealy v. Campbell*, 20 Oho St. 3d 23, 25 (1985).) Here, the statutes upon which Plaintiffs base their action do not provide for any individual rights from which the individual plaintiffs can invoke standing. (Reply at 10.)

As to Dayton City's claim that it is excluded from the budget bills due to its partial settlement agreement with the State, Defendants contend that the exemption provided in the budget bills only applies if a *payment* is expressly required by a settlement agreement. Because Dayton City is not asserting any claims related to payments required by the parties' partial settlement agreement, its claims are precluded by the budget bills. (MJP at 12; Reply at 3.)

On November 21, 2013, the Court held a hearing on the record on Defendants' Motion for Judgment on the Pleadings. Before the hearing, Plaintiffs and Defendants submitted supplemental case law in support of their respective positions on the motion. Defendants' Motion for Judgment on the Pleadings is now before the Court.

III. MOTION FOR JUDGMENT ON THE PLEADINGS STANDARD

Civ.R. 12(C) provides, "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." In considering a motion for judgment on the pleadings, the trial court may consider only the complaint and the answer and must construe as true all of the material allegations of the complaint, drawing all reasonable inferences in favor of the nonmoving party. *Chenault v. Ohio Department of Job & Family Servs.*, 194 Ohio App.3d 731, 2011-Ohio-3554, ¶9 (10th Dist.).

IV. LAW & ANALYSIS

A. The Individual Plaintiffs - Standing

"It is well established that before an Ohio court can consider the merits of a legal claim, the person seeking relief must establish standing to sue." *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 469 (1999), citing *Ohio Contractors Assn. v. Bicking*, 71 Ohio St.3d 318, 320 (1994). Under Ohio's common law, standing generally requires that the person bringing the action allege a "personal stake" in the outcome of the action, which generally requires that the plaintiff suffer an actual and concrete injury. *Id.* (citations omitted.); *Bicking*, 71 Ohio St.3d at 320; *Cleveland v. Shaker Hts.*, 30 Ohio St. 3d 49, 51 (1987) ("Whether a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy is what has traditionally been referred to as the question of standing to sue. Where the party does not rely upon any specific statute authorizing invocation of the judicial process,

the question of standing depends on whether the party has alleged ... a “personal stake in the outcome of the controversy.”); *League of United Latin Am. Citizens v. Kasich*, 10th Dist. No. 10AP-639, 2012-Ohio-947 (Mar. 6, 2012). “The injury is not required to be large or economic, but it must be palpable.” *League of United Latin Am. Citizens* at ¶21 (citations omitted). In addition, the injury cannot be speculative. *Id.* Rather, “a party must be able to demonstrate that it has suffered or will suffer a specific injury traceable to the challenged action that is likely to be redressed if the court invalidates the action or inaction.” *Brown v. Columbus City Schools Bd. of Educ.*, 10th Dist. No. 08AP-1067, 2009-Ohio-3230, ¶6 (citation omitted). An injury that is shared by the population in general is not sufficient to confer standing. *Sheward*, 86 Ohio St.3d at 469-470 (citations omitted) (“[i]n order to have standing to attack the constitutionality of a legislative enactment, the private litigant must generally show that he or she has suffered or is threatened with a direct and concrete injury in a manner or degree different from that suffered by the public in general, that the law in question caused the injury, and that the relief requested will redress the injury.”).

Separate from common law standing requirements, Civil R. 17(A) requires that all actions be “prosecuted in the name of the real party in interest.” The Ohio Supreme Court has clarified that standing is a jurisdictional issue, whereas the real party in interest requirement in Civil R. 17(A) is a “procedural requirement” that concerns proper party joinder. *Fed. Home Loan Mortg. Corp. v. Schwartzwald*, 134 Ohio St. 3d 13, 2012-Ohio-5017, ¶¶31, 33. “Civ. R. 17(A) does not address standing; rather, the point of the rule is that ‘suits by representative plaintiffs on behalf of the real parties in interest are the exception rather than the rule and should only be allowed when the real parties in interest are identifiable and the res judicata scope of the judgment can be effectively determined.’” *Id.* at ¶33, quoting *Lincoln Property Co. v. Roche*,

546 U.S. 81, 90 (2005). The test for determining the real party in interest is: “Who would be entitled to damages?” *Cross Country Inns, Inc. v. Habegger Corp.*, 10th Dist. No. 94AEP01-41, 1995 Ohio App. LEXIS 985, *26 (Mar. 16, 1995); *see also Latimore v. Hartford Life & Accident Ins. Co.*, 5th Dist. No. 2011CA00227, 2012-Ohio-447, ¶31 (Jan. 30, 2012); *Maloof v. Squire, Sanders & Dempsey, LLP*, 8th Dist. No. 82406, 2003-Ohio-4351, ¶30 (Aug. 14, 2003). “If a party to a suit is not the real party in interest, that party lacks standing to pursue the cause.” *Brown v. Columbus City Schools Bd. of Educ.*, 10th Dist. No. 08AP-1067, 2009-Ohio-3230, ¶6 (June 30, 2009) (“A true party in interest is able to demonstrate injury in fact.”)

The individual plaintiffs here contend that their position as parents and teachers in the school districts confers standing under *Brown v. Columbus City Schools Bd. of Educ.*, 10th Dist. No. 08AP-1067, 2009-Ohio-3230 (June 30, 2009). In that action, individuals challenged Ohio’s school funding system, as well as the district’s system for allocating funds among its schools. The individuals alleged that they were taxpayers and residents of the city and school district. The trial court dismissed the action finding, *inter alia*, that the plaintiffs lacked standing because they failed to allege facts showing that they would suffer a direct and concrete injury from the funding allocation that was different from the injury suffered by the public in general. *Brown* at ¶7. The Tenth District upheld that determination, stating:

As for private standing, appellants clearly have no private standing in this matter. Appellants have no direct personal stake in the outcome of the controversy. Appellants have not suffered and are not threatened with any direct and concrete injury in a manner or degree different from that suffered by the public in general. Appellants alleged only that they were taxpayers in the city of Columbus. Appellants do not allege they are students in the Columbus City Schools system or are parents of students in the school system. If the merits of their action were to be unsuccessful, they could show no personal harm or damage that would result as separate from any harm suffered by the general taxpaying public. ...

Brown at ¶13. The Tenth District also agreed with the trial court that taxpayer and “public right” standing did not exist. *See id.* at ¶¶7-14.

Defendants contend that the individual plaintiffs do not have standing because they cannot show *both* that they have suffered a sufficient injury and that they are the real party in interest. (Reply at 8; MJP at 12.)

Upon review of the allegations in the Complaint, the Court finds that the individual plaintiffs have not met the requirements to establish that they have standing in this action. Specifically, the individual plaintiffs fail to demonstrate that they have suffered a “specific injury traceable to the challenged action that is likely to be redressed if the court invalidates the action or inaction.” As part of this analysis, the Court considers who will benefit if Plaintiffs are granted the requested relief, i.e. who is entitled to the damages or restitution if it is determined that funds were improperly withheld from the districts? The individual plaintiffs would not receive a direct benefit if Defendants were ordered to pay restitution for funds improperly withheld. Rather, the Plaintiff Districts would benefit from the relief requested. The individual plaintiffs make no allegations that they would receive promotions or reassignments in their employment if the districts receive additional funding, nor do they allege that the students would receive any tangible or direct benefit if the districts receive additional funding. At most, the Court is left to speculate about what, if any, benefit the parents, employees, or students in each district receive with additional funding. Furthermore, the language in *Brown* that Plaintiffs use as a basis for their argument does not automatically confer standing on the individual plaintiffs in this action. The *Brown* Court did not find it sufficient for plaintiffs to simply allege that they are students or parents without still showing that they meet the standing requirement of a direct

injury in fact. Undertaking a full standing analysis, the Court finds that the individual plaintiffs here do not have private standing to bring their action.

1. Taxpayer & Citizen Standing

Under the common law, a plaintiff does not have standing to challenge a legislative enactment simply because he is a taxpayer or citizen. Rather, the Ohio Supreme Court has set forth the following rule with respect to taxpayer or citizen standing:

[A]part from statute, a taxpayer cannot bring an action to prevent the carrying out of a public contract or the expenditure of public funds unless he has some special interest therein by reason of which his own property rights are put in jeopardy. In other words, private citizens may not restrain official acts when they fail to allege and prove damage to themselves different in character from that sustained by the public generally.

State ex rel. Masterson v. Ohio State Racing Comm., 162 Ohio St. 366, 368 (1954) (citations omitted).

Here, Plaintiffs' complaints suggest that the individual plaintiffs are bringing their claims as citizens and taxpayers. Although the parties have not made arguments specifically regarding whether the individual plaintiffs have taxpayer standing, the Court will still analyze the issue to the extent such standing is invoked from the Complaint. Taxpayer standing requires some form of individual or particularized harm separate from every other taxpayer. *Masterson*, 162 Ohio St. at 368. But the Court finds no allegations of any harm to the individual plaintiffs here that is distinct from that which could be alleged by every other taxpayer in the named school districts. Thus, Plaintiffs do not have taxpayer standing to bring this action.

2. Statutory Standing

In addition to the common law, a plaintiff may also have standing pursuant to a state statute. Where a statute specifically confers standing on certain individuals or classes of people, common law standing requirements generally do not apply. *See Ohio Valley Associated Builders*

and Contractors v. Kuempel, 192 Ohio App.3d 504, 2011-Ohio-756, ¶22 (2d Dist.); *Ohio Valley Associated Builders and Contractors v. Rapier Electric, Inc.*, 192 Ohio App.3d 29, 2011-Ohio-160, ¶20 (12th Dist.). Nonetheless, the Ohio Supreme Court has made it clear “[n]ot every statute is to be read as an abrogation of the common law.” *Bresnik v. Beulah Park Ltd. Partnership, Inc.*, 67 Ohio St.3d 302, 304, 617 N.E.2d 1096 (1993). Instead, “[s]tatutes are to be read and construed in the light of and with reference to the rules and principles of the common law in force at the time of their enactment, and in giving construction to a statute the legislature will not be presumed or held, to have intended a repeal of the settled rules of the common law unless the language employed by it clearly expresses or imports such intention.” *Id.* (emphasis in original) (citations omitted). In determining whether a statute confers standing and to whom a statute confers standing, the Court applies general principles of statutory construction. *See, e.g., Kuempel*, 2011-Ohio-756; *Rapier Electric, Inc.*, 2011-Ohio-160. “[T]he words used in the statute are to be taken in their usual, normal, and customary meaning.” *Rapier Electric, Inc.*, 2011-Ohio-160, ¶24.

Kuempel and *Rapier Electric, Inc.*, provides an example of a statute that confers statutory standing. The statute at issue, R.C. 4115.16, said: “... the interested party may file a complaint in court of common pleas of the county in which the violation is alleged to have occurred.” R.C. 4115.16(B). The definitions section of the statute then specifically defined the four types of individuals or organizations that could qualify as an “interested party.” *See* R.C. 4115.03(F). The *Kuempel* and *Rapier Electric, Inc.* courts thus did not have to determine whether the statute conferred statutory standing, as that was explicit, but instead only had to determine if the plaintiffs met one of the definitions of an “interested party.”

Defendants argue that the statutes governing funding calculations and allocations, R.C. 3317.02, 3317.022(A), and 3317.03, precludes the individual plaintiffs in this action from having standing because the statutes do not explicitly mention individuals or grant any individuals substantive rights. (MJP at 12-13.) Plaintiffs respond that the failure to list individuals in the statutes is not fatal to the individual plaintiffs' claims because "there is no rule that every action to enforce a statute can be brought only by persons identified therein." (Memo. Opp. at 3.) Rather, Plaintiffs contend that the violation of the statute gives rise to a right of action to those parties who have sustained an actual injury due to the violation. (Memo. Opp. at 4.)

Although this issue of whether the individual plaintiffs have statutory standing is moot based upon the Court's common law standing analysis, the Court will address Defendants' argument. The Court finds that the funding statutes at issue in the consolidated action are not the sole basis upon which the parties may have standing. Accordingly, the failure to identify a specific party in the language of the statutes does not preclude such party from challenging the statutes *if* that party meets the general, common law standing requirements. The statutes at issue cannot be read to abrogate common law standing principles.

Having determined that the individual plaintiffs in the consolidated action lack standing to pursue their claims against Defendants, the Court **GRANTS IN PART** Defendants' Motion for Judgment on the Pleadings. The Court dismisses, for lack of standing, all claims raised by the following individuals in the consolidated action: (1) Keith Cosby, individually and as parent and next friend of John Doe, a student enrolled in the Dayton City School District; (2) Ann Marie Snyder, individually and as parent and next friend of Jane Doe, a student enrolled in the Dayton City School District; (3) Dessie M. and Christopher Sanders, individually and as parents

and next friends of Jane and John Doe, students enrolled in the Cleveland Metropolitan School District; (4) Edith C. Britt, individually and as parent and next friend of Jane Doe, a student enrolled in the Cleveland Metropolitan School District; (5) Angela Barnett, individually and as a parent and next friend of Jane Doe, a student enrolled in the Cleveland Metropolitan School District; (6) Bonnie Jo Herrmann, individually and as parent and next friend of John Doe, a student enrolled in the Toledo City School District; (7) Christine Varwig, individually and as parent and next friend of Jane Doe, a student enrolled in the Toledo City School District; and (8) Charles L. Hilyard, Jr., individually and as parent and next friend of John Doe, a student enrolled in the Toledo City School District.

A. Constitutionality of The Budget Bills

The substantive issue of whether Defendants were allowed to use the community schools' enrollment data instead of the school districts' data, and adjust funding to the districts based upon such data, was litigated previously in Hamilton County. There, the court found that the school funding statutes prohibited the State from adjusting funding to the school districts based upon enrollment data provided by community schools. That decision was upheld on appeal, and Plaintiffs ultimately seek a similar determination here. *See Cincinnati School District Bd. of Educ. v. State Bd. of Educ.*, 176 Ohio App. 3d 157, 2008-Ohio-1434 (1st Dist.) After the appellate court issued its decision in the *Cincinnati* case, though, the Ohio legislature included a provision in its 2009 budget bill to address Plaintiffs' claims. The validity and effect of that provision, and a similar 2011 provision, is at issue in Defendant's Motion for Judgment on the Pleadings.

Specifically, the 2009 budget bill states:

(A) Except as expressly required under a court judgment not subject to further appeals, or a settlement agreement with a school district executed on or before

June 1, 2009, **in the case of a school district for which the formula ADM for fiscal year 2005**, as reported for that fiscal year under division (A) of section 3317.03 of the Revised Code, **was reduced based on enrollment reports for community schools**, made under section 3314.08 of the Revised Code, regarding students entitled to attend school in the district, **which reduction of formula ADM resulted in a reduction of foundation funding or transitional aid funding for fiscal year 2005, 2006, or 2007, no school district**, except a district named in the court's judgment or the settlement agreement, **shall have a legal claim for reimbursement of the amount of such reduction** in foundation funding or transitional aid funding, and the state shall not have liability for reimbursement of the amount of such reduction in foundation funding or transitional aid funding.

(B) As used in this section:

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

(2) "Entitled to attend school" means entitled to attend school in a school district under section 3313.64 or 3313.65 of the Revised Code.

(3) "Foundation funding" means payments calculated for the respective fiscal year under Chapter 3317. of the Revised Code.

(4) "Transitional aid funding" means payments calculated for the respective fiscal year under Section 41.37 of Am. Sub. H.B. 95 of the 125th General Assembly, as subsequently amended; Section 206.09.39 of Am. Sub. H.B. 66 of the 126th General Assembly, as subsequently amended; and Section 269.30.80 of Am. Sub. H.B. 119 of the 127th General Assembly.

Am. Sub. H. B. 1 (128th G.A.) §265.60.70; Am. Sub. H.B. 153 (129th G.A.) §267.50.60 (emphasis added). Notably, the budget bills did not change how school funding allocations were to be calculated under the school funding statute or affect the validity of the substantive analysis in the *Cincinnati* case. Rather, the bills removed the districts' claims of improper calculations made in previous funding decisions.

Under the Ohio Constitution, Ohio's legislature has "no power to pass retroactive laws." Ohio Const. Art. II Sec. 28. The Ohio Supreme Court has found that retroactive laws affecting substantive rights, as compared to laws that are only remedial in nature, are unconstitutional.

See, e.g., Gregory v. Flowers, 32 Ohio St. 2d 48, 52-53 (1972). To determine if a law is unconstitutionally retroactive, courts must engage in a two-part analysis:

- (1) Did the General Assembly specifically intend that the statute apply retroactively?
- (2) Is the statute “substantive, rendering it unconstitutionally retroactive, as opposed to merely remedial”?

Bielat v. Bielat, 87 Ohio St. 3d 350, 353 (2000). “[A] retroactive statute is substantive—and therefore *unconstitutionally* retroactive—if it impairs vested rights, affects an accrued substantive right, or imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction.” *Id.* at 354, citing *State v. Cook*, 83 Ohio St. 3d 404, 411 (1985). Remedial laws, on the other hand, are “those that ‘merely substitute a new or more appropriate remedy for the enforcement of an existing right.’” *Id.*, quoting *State v. Cook*, 83 Ohio St. 3d at 411. Put another way, “[l]egislation is remedial, and therefore permissibly retroactive, when the legislation seeks only to avoid ‘the necessity for multiplicity of suits and the accumulation of costs [or to] promote the interests of all parties.’” *Id.*, quoting *Rairden v. Holden*, 15 Ohio St. 207, 211 (1864).

There is no dispute that the 2009 and 2011 budget bills apply retroactively. Under the terms of the provisions, they only target school funding decisions made between 2005 and 2007. The central issue is whether the laws are substantive or remedial in nature.

Defendants primarily rely upon *Cleveland v. Zangerle*, 127 Ohio St. 91 (1933), and *Outcalt v. Guckenberger*, 134 Ohio St. 457 (1938), in support of their argument that the 2009 and 2011 budget bills are not substantive. Plaintiffs, on the other hand, rely upon *State ex rel. Kenton City School Dist. Bd. of Educ. v. State Bd. of Educ.*, 174 Ohio St. 257 (1963), to support their argument that they had a vested right to receive the funds and the budget bills took away that substantive right.

In *Zangerle*, the city of Cleveland sought to enjoin certain officials from distributing tax revenue collected under the Intangible Tax Law. The Ohio Supreme Court had previously invalidated, on constitutional grounds, certain distribution provisions of the Intangible Tax Law. In response, the legislature passed a bill directing that the taxes collected under the law be distributed to public libraries and park districts. Some of the tax revenue had already been collected, some had not, but none of the revenue had yet been distributed. The city argued that the new bill was unconstitutionally retroactive. The Supreme Court, however, disagreed, stating:

No governmental subdivision of the state has any vested right, at least until distribution is made, in any taxes levied and in the process of collection. Until such distribution is made the Legislature of Ohio is fully competent to divert the proceeds among those local subdivisions as it deems best to meet the emergencies which it finds to exist.

Zangerle at 93.

In *Outcalt*, the State sought to compel officials to charge penalties and interest on certain overdue and delinquent property taxes. The State challenged the constitutionality of recent legislative enactments that provided for the remission of penalties, interest, and charges on delinquent taxes if the taxes were paid within a certain time frame. In analyzing the issue, the Supreme Court clarified that it was not dealing with the constitutionality of a taxing provision because penalties and interest charges are not taxes. The Court then found that the remission provisions were not unconstitutionally retroactive

for the reason that the acts are prospective in character -- they do not interfere with vested rights acquired under existing laws, impose a new duty, attach a new disability, or create a new obligation with respect to transactions or considerations already past *** the subdivisions of the state have no vested rights in unpaid penalties, interest and charges on uncollected delinquent taxes *** by the Whittemeore Acts, the Legislature has merely provided a different remedy for the collection of such taxes, there is no question of the right of the state to change the remedy, and, in doing so, vested rights remain unaffected.

Outcalt at 462.

The case upon which the districts rely here, *State ex rel. Kenton City School Dist. Bd. of Educ. v. State Bd. of Educ.*, 174 Ohio St. 257 (1963), did not directly implicate the constitutional prohibition against retroactive laws. Rather, the action involved Ohio's Savings Statute, which provided that the repeal of a statute does not affect "any rights or liabilities which exist, have accrued, or have been incurred" by that statute. See R.C. 1.21. In *Kenton*, the school district filed a mandamus action against the Board of Education to compel the Board to apportion funding in accordance with a school funding statute that was in effect in 1960. In that year, the Hardin Central Local School District was consolidated with the Kenton City School District. Under the school funding statute that was in effect at the time, school funding was not to be "reduced on account of such consolidation during the next succeeding three years." Before the expiration of that three year period, however, the legislature amended the statute, effective January 1, 1962, and limited the minimum grants awarded to certain consolidated districts. The effect of the amendment was to reduce the funding that would be awarded to Kenton. The parties disputed whether the district had any vested rights under the previous statute that would entitle it to receive the guaranteed minimum funding originally provided by that statute.

The Supreme Court found that the school district did accrue rights under the previous version of the statute, stating:

To be guaranteed a minimum amount of money would be a substantive right, whether the guarantee is to a political subdivision or to an individual.

Here we have a statute which guaranteed a school district that in the event of a consolidation with another school district there would be a certain minimum payment to the consolidated district for a period of three years. Inasmuch as the statute was in force at the time of the consolidation in the present case, a right accrued to the consolidated district which, if the statute had not been amended, could have beyond question been enforced by a writ of mandamus. There was nothing discretionary about such provision.

Clearly, a substantive right accrued to the consolidated school district
Kenton at 261-262. Finding that the “rights of the relator [arose] at the time of the consolidation,” the Supreme Court issued the writ of mandamus. *Kenton* at 263.

All three cases upon which the parties rely are distinguishable, in part, from the present case. In *Zangerle*, none of the tax revenue had been distributed yet. The distribution provision of the applicable statute was invalidated and the legislature passed a new bill directing the distribution of those tax proceeds. In contrast, in the present action, Plaintiffs allege that some of the school funding was already distributed when Defendants decided to recalculate the amount of funding owed to the districts.

Furthermore, unlike in *Zangerle*, the legislature here did not enact a new law redirecting distribution of tax proceeds before Defendants changed the way that they calculated funding or adjusted the amount of funding due to the districts. Rather, Defendants took action and then, several years later, the legislature passed the budget bills. Those bills did not change the way that school funding allocations were to be calculated and distributed, nor did they amend or repeal the school funding laws. Instead, the budget bills purported to remove Plaintiffs’ claims under laws that were valid and in force when the distribution decisions were made.

Outcalt, too, is distinguishable from the present case. Unlike here, *Outcalt* involved new legislation that had prospective, not retroactive application. *Outcalt* also involved penalties that were not yet collected, whereas Plaintiffs here allege that some distributions were already made before Defendants recalculated enrollment figures. Finally, the *Kenton* case did not address the issue of retroactive application of a statute.

Under the general principles outlined by the Supreme Court, however, and accepting as true the facts asserted in the complaints, the Court finds that the 2009 and 2011 budget bills do

not preclude the plaintiff school districts from asserting their claims. Rather, the budget bills are unconstitutionally retroactive because they affect a substantive right. First, even under the standard set forth in *Zangerle*, the school districts had a vested right because they actually received some of the funding before Defendants recalculated the enrollment figures and decided that the districts had been overpaid. As alleged in the complaints, Defendants decided that the Toledo school district was overpaid over \$3.5 million and began deducting amounts from the district's School Foundation payments in order to recoup the overpayment. (Toledo Compl. ¶¶34-39.) As to Dayton City school district, Defendants determined that it overpaid the district nearly \$4.8 million. (Dayton Compl. ¶¶37-38.) Finally, Defendants decided that they overpaid the Cleveland school district over \$1.8 million. (Cleveland Compl. ¶¶27-38.) Because funds were actually distributed, a vested right to those funds existed.

Likewise, under the principles set forth in *Kenton*, the school districts had a substantive right to the funding under the law as it existed for fiscal years 2005 through 2007. The school funding statutes mandated a procedure by which enrollment figures were to be calculated and then addressed calculation and distribution of school funding based upon those enrollment figures. The statutes then expressly guaranteed that the districts would receive some minimum amount of funding based upon previous years' funding allocations. Consequently, the districts' guaranteed funding allocations were reduced as a result of reductions in the districts' 2005 funding allocations. (See Toledo Compl. ¶¶44-47; Dayton Compl. ¶¶44-47; Cleveland Compl. ¶¶44-47.) Because certain minimum amounts of funding were guaranteed, the amount of which the districts allege was improperly reduced, a substantive right accrued.

The Court is further compelled to reach this determination because the budget bills did not change the substantive law under which school funding was calculated; nor did the budget

bills simply *divert* the school funding tax proceeds. One court has already determined that Defendants' recalculation of enrollment statistics using community school data was improper. *See Cincinnati School District Bd. of Educ. v. State Bd. of Educ.*, 176 Ohio App. 3d 157, 2008-Ohio-1434 (1st Dist.) Defendants cannot fail to perform an obligation required by a statute, namely calculating and distributing school funding allocations in accordance with a statutory mandate, and then simply have the legislature include a provision in a budget bill that removes the districts' right to enforce that previously existing obligation.

Based upon the Court's determination on this issue, the Court need not address whether the 2009 and 2011 Budget Bills also violate the Uniformity Clause, whether the add-in claims are precluded by the budget bills, or whether the partial settlement involving the Dayton City school district exempts that district from the preclusion provisions in the budget bills.

Having determined that the provisions in the 2009 and 2011 Budget Bills that purport to remove the plaintiff school districts' claims are unconstitutionally retroactive, the Court **DENIES IN PART** Defendants' Motion for Judgment on the Pleadings.

The Court finds that its decision on Defendants' Motion for Judgment on the Pleadings affects substantial rights of the parties. As such, the Court finds that its decision herein is a final appealable order for which there is no just reason for delay. Civ. R. 54(B).

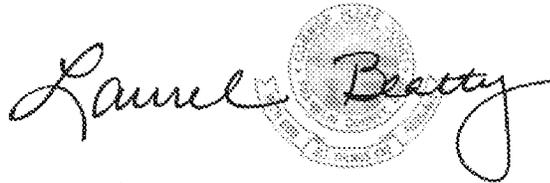
Copies to:
Todd Marti (electronically)
Counsel for Defendants

James Hughes, Susan Greenberger, Jennifer Flint & Nicholas Pittner (electronically)
Counsel for Plaintiffs

Franklin County Court of Common Pleas

Date: 01-16-2014
Case Title: TOLEDO CITY SCHOOL DISTRICT BOARD EDUCATION -VS- OHIO STATE BOARD EDUCATION
Case Number: 11CV014120
Type: DECISION/ENTRY

It Is So Ordered.

A handwritten signature in cursive script, "Laurel Beatty", is written over a circular official seal. The seal is partially obscured by the signature and contains some illegible text.

/s/ Judge Laurel A. Beatty

Electronically signed on 2014-Jan-16 page 24 of 24

Court Disposition

Case Number: 11CV014120

Case Style: TOLEDO CITY SCHOOL DISTRICT BOARD
EDUCATION -VS- OHIO STATE BOARD EDUCATION

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 11CV0141202012-04-2799980000
Document Title: 04-27-2012-MOTION FOR JUDGMENT ON
PLEADINGS
Disposition: MOTION GRANTED IN PART

Baldwin's Ohio Revised Code Annotated
Constitution of the State of Ohio
Article II. Legislative (Refs & Annos)

OH Const. Art. II, § 28

O Const II Sec. 28 Retroactive laws; laws impairing obligation of contracts

[Currentness](#)

The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.

CREDIT(S)

(1851 constitutional convention, adopted eff. 9-1-1851)

[Notes of Decisions \(766\)](#)

Const. Art. II, § 28, OH CONST Art. II, § 28

Current through 2015 Files 1 to 10, and 12 of the 131st GA (2015-2016).

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.

General Laws

of the

One Hundred Twenty-Fifth General Assembly

Continued

AN ACT

To amend sections 9.314, 2151.011, 2151.421, 2151.86, 2152.18, 3301.0711, 3302.01, 3302.03, 3313.53, 3313.533, 3313.61, 3313.611, 3313.612, 3313.662, 3313.672, 3313.85, 3317.03, 3319.29, 3319.291, 3319.303, 3319.31, 3319.51, 3381.04, and 5139.05 of the Revised Code; to amend Section 7 of Sub. H.B. 196 of the 124th General Assembly and to amend Section 7 of Sub. H.B. 196 of the 124th General Assembly for the purpose of codifying it as section 3319.304 of the Revised Code; and to amend Sections 41.37 and 98.01 of Am. Sub. H.B. 95 of the 125th General Assembly to require that upon a child's discharge or release from the custody of the Department of Youth Services certain records pertaining to that child be released to the juvenile court and to the superintendent of the school district in which the child is entitled to attend school; to specify that a school district's policy on the assignment of students to an alternative school may provide for the assignment of any child released from the custody of the Department of Youth Services to such a school; to make the Department of Youth Services eligible for certain grants and services from the Ohio SchoolNet Commission; to include public and chartered nonpublic schools as out-of-home care entities for the purposes of the Juvenile Code; to exempt limited English proficient students who have been enrolled in United States schools for less than one year from certain testing and accountability requirements; to require the county probate court, instead of the

pupil's parent shall notify the school of that fact. Upon being so informed, the school shall inform the elementary or secondary school from which it requests the pupil's records of that fact.

Sec. 3313.85. If the board of education of any city ~~or~~, exempted village, or local school district or the governing board of any educational service center fails to perform the duties imposed upon it or fails to fill a vacancy in such board within a period of thirty days after such vacancy occurs, the probate court of the county in which such district or service center is located, upon being advised and satisfied of such failure, shall act as such board and perform all duties imposed upon such board.

~~If the board of any local school district fails to perform the duties imposed upon it or fails to fill a vacancy in such board within a period of thirty days after such vacancy occurs, the board of the educational service center in which such district is located, upon being advised and satisfied of such failure, shall act as such board and perform all duties imposed upon such board.~~

Sec. 3317.03. Notwithstanding divisions (A)(1), (B)(1), and (C) of this section, any student enrolled in kindergarten more than half time shall be reported as one-half student under this section.

(A) The superintendent of each city and exempted village school district and of each educational service center shall, for the schools under the superintendent's supervision, certify to the state board of education on or before the fifteenth day of October in each year for the first full school week in October the formula ADM, which shall consist of the average daily membership during such week of the sum of the following:

(1) On an FTE basis, the number of students in grades kindergarten through twelve receiving any educational services from the district, except that the following categories of students shall not be included in the determination:

(a) Students enrolled in adult education classes;

(b) Adjacent or other district students enrolled in the district under an open enrollment policy pursuant to section 3313.98 of the Revised Code;

(c) Students receiving services in the district pursuant to a compact, cooperative education agreement, or a contract, but who are entitled to attend school in another district pursuant to section 3313.64 or 3313.65 of the Revised Code;

(d) Students for whom tuition is payable pursuant to sections 3317.081 and 3323.141 of the Revised Code.

(2) On an FTE basis, the number of students entitled to attend school in the district pursuant to section 3313.64 or 3313.65 of the Revised Code, but

receiving educational services in grades kindergarten through twelve from one or more of the following entities:

(a) A community school pursuant to Chapter 3314. of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in such community school;

(b) An alternative school pursuant to sections 3313.974 to 3313.979 of the Revised Code as described in division (1)(2)(a) or (b) of this section;

(c) A college pursuant to Chapter 3365. of the Revised Code, except when the student is enrolled in the college while also enrolled in a community school pursuant to Chapter 3314. of the Revised Code;

(d) An adjacent or other school district under an open enrollment policy adopted pursuant to section 3313.98 of the Revised Code;

(e) An educational service center or cooperative education district;

(f) Another school district under a cooperative education agreement, compact, or contract.

(3) Twenty per cent of the number of students enrolled in a joint vocational school district or under a vocational education compact, excluding any students entitled to attend school in the district under section 3313.64 or 3313.65 of the Revised Code who are enrolled in another school district through an open enrollment policy as reported under division (A)(2)(d) of this section and then enroll in a joint vocational school district or under a vocational education compact;

(4) The number of handicapped children, other than handicapped preschool children, entitled to attend school in the district pursuant to section 3313.64 or 3313.65 of the Revised Code who are placed with a county MR/DD board, minus the number of such children placed with a county MR/DD board in fiscal year 1998. If this calculation produces a negative number, the number reported under division (A)(4) of this section shall be zero.

(B) To enable the department of education to obtain the data needed to complete the calculation of payments pursuant to this chapter, in addition to the formula ADM, each superintendent shall report separately the following student counts:

(1) The total average daily membership in regular day classes included in the report under division (A)(1) or (2) of this section for kindergarten, and each of grades one through twelve in schools under the superintendent's supervision;

(2) The number of all handicapped preschool children enrolled as of the first day of December in classes in the district that are eligible for approval under division (B) of section 3317.05 of the Revised Code and the number

of those classes, which shall be reported not later than the fifteenth day of December, in accordance with rules adopted under that section;

(3) The number of children entitled to attend school in the district pursuant to section 3313.64 or 3313.65 of the Revised Code who are participating in a pilot project scholarship program established under sections 3313.974 to 3313.979 of the Revised Code as described in division (I)(2)(a) or (b) of this section, are enrolled in a college under Chapter 3365. of the Revised Code, except when the student is enrolled in the college while also enrolled in a community school pursuant to Chapter 3314. of the Revised Code, are enrolled in an adjacent or other school district under section 3313.98 of the Revised Code, are enrolled in a community school established under Chapter 3314. of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in such community school, or are participating in a program operated by a county MR/DD board or a state institution;

(4) The number of pupils enrolled in joint vocational schools;

(5) The average daily membership of handicapped children reported under division (A)(1) or (2) of this section receiving special education services for the category one handicap described in division (A) of section 3317.013 of the Revised Code;

(6) The average daily membership of handicapped children reported under division (A)(1) or (2) of this section receiving special education services for category two handicaps described in division (B) of section 3317.013 of the Revised Code;

(7) The average daily membership of handicapped children reported under division (A)(1) or (2) of this section receiving special education services for category three handicaps described in division (C) of section 3317.013 of the Revised Code;

(8) The average daily membership of handicapped children reported under division (A)(1) or (2) of this section receiving special education services for category four handicaps described in division (D) of section 3317.013 of the Revised Code;

(9) The average daily membership of handicapped children reported under division (A)(1) or (2) of this section receiving special education services for the category five handicap described in division (E) of section 3317.013 of the Revised Code;

(10) The average daily membership of handicapped children reported under division (A)(1) or (2) of this section receiving special education services for category six handicaps described in division (F) of section 3317.013 of the Revised Code;

(11) The average daily membership of pupils reported under division (A)(1) or (2) of this section enrolled in category one vocational education programs or classes, described in division (A) of section 3317.014 of the Revised Code, operated by the school district or by another district, other than a joint vocational school district, or by an educational service center;

(12) The average daily membership of pupils reported under division (A)(1) or (2) of this section enrolled in category two vocational education programs or services, described in division (B) of section 3317.014 of the Revised Code, operated by the school district or another school district, other than a joint vocational school district, or by an educational service center;

(13) The average number of children transported by the school district on board-owned or contractor-owned and -operated buses, reported in accordance with rules adopted by the department of education;

(14)(a) The number of children, other than handicapped preschool children, the district placed with a county MR/DD board in fiscal year 1998;

(b) The number of handicapped children, other than handicapped preschool children, placed with a county MR/DD board in the current fiscal year to receive special education services for the category one handicap described in division (A) of section 3317.013 of the Revised Code;

(c) The number of handicapped children, other than handicapped preschool children, placed with a county MR/DD board in the current fiscal year to receive special education services for category two handicaps described in division (B) of section 3317.013 of the Revised Code;

(d) The number of handicapped children, other than handicapped preschool children, placed with a county MR/DD board in the current fiscal year to receive special education services for category three handicaps described in division (C) of section 3317.013 of the Revised Code;

(e) The number of handicapped children, other than handicapped preschool children, placed with a county MR/DD board in the current fiscal year to receive special education services for category four handicaps described in division (D) of section 3317.013 of the Revised Code;

(f) The number of handicapped children, other than handicapped preschool children, placed with a county MR/DD board in the current fiscal year to receive special education services for the category five handicap described in division (E) of section 3317.013 of the Revised Code;

(g) The number of handicapped children, other than handicapped preschool children, placed with a county MR/DD board in the current fiscal year to receive special education services for category six handicaps described in division (F) of section 3317.013 of the Revised Code.

(C)(1) Except as otherwise provided in this section for kindergarten students, the average daily membership in divisions (B)(1) to (12) of this section shall be based upon the number of full-time equivalent students. The state board of education shall adopt rules defining full-time equivalent students and for determining the average daily membership therefrom for the purposes of divisions (A), (B), and (D) of this section.

(2) A student enrolled in a community school established under Chapter 3314. of the Revised Code shall be counted in the formula ADM and, if applicable, the category one, two, three, four, five, or six special education ADM of the school district in which the student is entitled to attend school under section 3313.64 or 3313.65 of the Revised Code for the same proportion of the school year that the student is counted in the enrollment of the community school for purposes of section 3314.08 of the Revised Code.

(3) No child shall be counted as more than a total of one child in the sum of the average daily memberships of a school district under division (A), divisions (B)(1) to (12), or division (D) of this section, except as follows:

(a) A child with a handicap described in section 3317.013 of the Revised Code may be counted both in formula ADM and in category one, two, three, four, five, or six special education ADM and, if applicable, in category one or two vocational education ADM. As provided in division (C) of section 3317.02 of the Revised Code, such a child shall be counted in category one, two, three, four, five, or six special education ADM in the same proportion that the child is counted in formula ADM.

(b) A child enrolled in vocational education programs or classes described in section 3317.014 of the Revised Code may be counted both in formula ADM and category one or two vocational education ADM and, if applicable, in category one, two, three, four, five, or six special education ADM. Such a child shall be counted in category one or two vocational education ADM in the same proportion as the percentage of time that the child spends in the vocational education programs or classes.

(4) Based on the information reported under this section, the department of education shall determine the total student count, as defined in section 3301.011 of the Revised Code, for each school district.

(D)(1) The superintendent of each joint vocational school district shall certify to the superintendent of public instruction on or before the fifteenth day of October in each year for the first full school week in October the formula ADM, which, except as otherwise provided in this division, shall consist of the average daily membership during such week, on an FTE basis, of the number of students receiving any educational services from the

district, including students enrolled in a community school established under Chapter 3314. of the Revised Code who are attending the joint vocational district under an agreement between the district board of education and the governing authority of the community school and are entitled to attend school in a city, local, or exempted village school district whose territory is part of the territory of the joint vocational district.

The following categories of students shall not be included in the determination made under division (D)(1) of this section:

(a) Students enrolled in adult education classes;

(b) Adjacent or other district joint vocational students enrolled in the district under an open enrollment policy pursuant to section 3313.98 of the Revised Code;

(c) Students receiving services in the district pursuant to a compact, cooperative education agreement, or a contract, but who are entitled to attend school in a city, local, or exempted village school district whose territory is not part of the territory of the joint vocational district;

(d) Students for whom tuition is payable pursuant to sections 3317.081 and 3323.141 of the Revised Code.

(2) To enable the department of education to obtain the data needed to complete the calculation of payments pursuant to this chapter, in addition to the formula ADM, each superintendent shall report separately the average daily membership included in the report under division (D)(1) of this section for each of the following categories of students:

(a) Students enrolled in each grade included in the joint vocational district schools;

(b) Handicapped children receiving special education services for the category one handicap described in division (A) of section 3317.013 of the Revised Code;

(c) Handicapped children receiving special education services for the category two handicaps described in division (B) of section 3317.013 of the Revised Code;

(d) Handicapped children receiving special education services for category three handicaps described in division (C) of section 3317.013 of the Revised Code;

(e) Handicapped children receiving special education services for category four handicaps described in division (D) of section 3317.013 of the Revised Code;

(f) Handicapped children receiving special education services for the category five handicap described in division (E) of section 3317.013 of the Revised Code;

(g) Handicapped children receiving special education services for category six handicaps described in division (F) of section 3317.013 of the Revised Code;

(h) Students receiving category one vocational education services, described in division (A) of section 3317.014 of the Revised Code;

(i) Students receiving category two vocational education services, described in division (B) of section 3317.014 of the Revised Code.

The superintendent of each joint vocational school district shall also indicate the city, local, or exempted village school district in which each joint vocational district pupil is entitled to attend school pursuant to section 3313.64 or 3313.65 of the Revised Code.

(E) In each school of each city, local, exempted village, joint vocational, and cooperative education school district there shall be maintained a record of school membership, which record shall accurately show, for each day the school is in session, the actual membership enrolled in regular day classes. For the purpose of determining average daily membership, the membership figure of any school shall not include any pupils except those pupils described by division (A) of this section. The record of membership for each school shall be maintained in such manner that no pupil shall be counted as in membership prior to the actual date of entry in the school and also in such manner that where for any cause a pupil permanently withdraws from the school that pupil shall not be counted as in membership from and after the date of such withdrawal. There shall not be included in the membership of any school any of the following:

(1) Any pupil who has graduated from the twelfth grade of a public high school;

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

(3) Any pupil who was enrolled in the schools of the district during the previous school year when tests were administered under section 3301.0711 of the Revised Code but did not take one or more of the tests required by that section and was not excused pursuant to division (C)(1) or (3) of that section;

(4) Any pupil who has attained the age of twenty-two years, except for veterans of the armed services whose attendance was interrupted before completing the recognized twelve-year course of the public schools by reason of induction or enlistment in the armed forces and who apply for reenrollment in the public school system of their residence not later than four years after termination of war or their honorable discharge.

If, however, any veteran described by division (E)(4) of this section elects to enroll in special courses organized for veterans for whom tuition is

paid under the provisions of federal laws, or otherwise, that veteran shall not be included in average daily membership.

Notwithstanding division (E)(3) of this section, the membership of any school may include a pupil who did not take a test required by section 3301.0711 of the Revised Code if the superintendent of public instruction grants a waiver from the requirement to take the test to the specific pupil. The superintendent may grant such a waiver only for good cause in accordance with rules adopted by the state board of education.

Except as provided in divisions (B)(2) and (F) of this section, the average daily membership figure of any local, city, exempted village, or joint vocational school district shall be determined by dividing the figure representing the sum of the number of pupils enrolled during each day the school of attendance is actually open for instruction during the first full school week in October by the total number of days the school was actually open for instruction during that week. For purposes of state funding, "enrolled" persons are only those pupils who are attending school, those who have attended school during the current school year and are absent for authorized reasons, and those handicapped children currently receiving home instruction.

The average daily membership figure of any cooperative education school district shall be determined in accordance with rules adopted by the state board of education.

(F)(1) If the formula ADM for the first full school week in February is at least three per cent greater than that certified for the first full school week in the preceding October, the superintendent of schools of any city, exempted village, or joint vocational school district or educational service center shall certify such increase to the superintendent of public instruction. Such certification shall be submitted no later than the fifteenth day of February. For the balance of the fiscal year, beginning with the February payments, the superintendent of public instruction shall use the increased formula ADM in calculating or recalculating the amounts to be allocated in accordance with section 3317.022 or 3317.16 of the Revised Code. In no event shall the superintendent use an increased membership certified to the superintendent after the fifteenth day of February.

(2) If on the first school day of April the total number of classes or units for handicapped preschool children that are eligible for approval under division (B) of section 3317.05 of the Revised Code exceeds the number of units that have been approved for the year under that division, the superintendent of schools of any city, exempted village, or cooperative education school district or educational service center shall make the

certifications required by this section for that day. If the department determines additional units can be approved for the fiscal year within any limitations set forth in the acts appropriating moneys for the funding of such units, the department shall approve additional units for the fiscal year on the basis of such average daily membership. For each unit so approved, the department shall pay an amount computed in the manner prescribed in section 3317.052 or 3317.19 and section 3317.053 of the Revised Code.

(3) If a student attending a community school under Chapter 3314. of the Revised Code is not included in the formula ADM certified for the first full school week of October for the school district in which the student is entitled to attend school under section 3313.64 or 3313.65 of the Revised Code, the department of education shall adjust the formula ADM of that school district to include the community school student in accordance with division (C)(2) of this section, and shall recalculate the school district's payments under this chapter for the entire fiscal year on the basis of that adjusted formula ADM. This requirement applies regardless of whether the student was enrolled, as defined in division (E) of this section, in the community school during the first full school week in October.

(G)(1)(a) The superintendent of an institution operating a special education program pursuant to section 3323.091 of the Revised Code shall, for the programs under such superintendent's supervision, certify to the state board of education the average daily membership of all handicapped children in classes or programs approved annually by the department of education, in the manner prescribed by the superintendent of public instruction.

(b) The superintendent of an institution with vocational education units approved under division (A) of section 3317.05 of the Revised Code shall, for the units under the superintendent's supervision, certify to the state board of education the average daily membership in those units, in the manner prescribed by the superintendent of public instruction.

(2) The superintendent of each county MR/DD board that maintains special education classes under section 3317.20 of the Revised Code or units approved pursuant to section 3317.05 of the Revised Code shall do both of the following:

(a) Certify to the state board, in the manner prescribed by the board, the average daily membership in classes under section 3317.20 of the Revised Code for each school district that has placed children in the classes;

(b) Certify to the state board, in the manner prescribed by the board, the number of all handicapped preschool children enrolled as of the first day of December in classes eligible for approval under division (B) of section

3317.05 of the Revised Code, and the number of those classes.

(3)(a) If on the first school day of April the number of classes or units maintained for handicapped preschool children by the county MR/DD board that are eligible for approval under division (B) of section 3317.05 of the Revised Code is greater than the number of units approved for the year under that division, the superintendent shall make the certification required by this section for that day.

(b) If the department determines that additional classes or units can be approved for the fiscal year within any limitations set forth in the acts appropriating moneys for the funding of the classes and units described in division (G)(3)(a) of this section, the department shall approve and fund additional units for the fiscal year on the basis of such average daily membership. For each unit so approved, the department shall pay an amount computed in the manner prescribed in sections 3317.052 and 3317.053 of the Revised Code.

(H) Except as provided in division (I) of this section, when any city, local, or exempted village school district provides instruction for a nonresident pupil whose attendance is unauthorized attendance as defined in section 3327.06 of the Revised Code, that pupil's membership shall not be included in that district's membership figure used in the calculation of that district's formula ADM or included in the determination of any unit approved for the district under section 3317.05 of the Revised Code. The reporting official shall report separately the average daily membership of all pupils whose attendance in the district is unauthorized attendance, and the membership of each such pupil shall be credited to the school district in which the pupil is entitled to attend school under division (B) of section 3313.64 or section 3313.65 of the Revised Code as determined by the department of education.

(I)(1) A city, local, exempted village, or joint vocational school district admitting a scholarship student of a pilot project district pursuant to division (C) of section 3313.976 of the Revised Code may count such student in its average daily membership.

(2) In any year for which funds are appropriated for pilot project scholarship programs, a school district implementing a state-sponsored pilot project scholarship program that year pursuant to sections 3313.974 to 3313.979 of the Revised Code may count in average daily membership:

(a) All children residing in the district and utilizing a scholarship to attend kindergarten in any alternative school, as defined in section 3313.974 of the Revised Code;

(b) All children who were enrolled in the district in the preceding year

who are utilizing a scholarship to attend any such alternative school.

(J) The superintendent of each cooperative education school district shall certify to the superintendent of public instruction, in a manner prescribed by the state board of education, the applicable average daily memberships for all students in the cooperative education district, also indicating the city, local, or exempted village district where each pupil is entitled to attend school under section 3313.64 or 3313.65 of the Revised Code.

Sec. 3319.29. Each application for any license or certificate pursuant to sections 3319.22 to 3319.27 of the Revised Code or for any permit pursuant to section 3319.301 ~~or 3319.302, 3319.303, or 3319.304~~ of the Revised Code, or renewal or duplicate of such a license, certificate, or permit, shall be accompanied by the payment of a fee in the amount established under division (A) of section 3319.51 of the Revised Code. Any fees received under this section shall be paid into the state treasury to the credit of the state board of education licensure fund established under division (B) of section 3319.51 of the Revised Code.

Any person applying for or holding a license, certificate, or permit pursuant to this section and sections 3319.22 to 3319.27 or section 3319.301 ~~or 3319.302, 3319.303, or 3319.304~~ of the Revised Code is subject to sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code and sections 3319.31 and 3319.311 of the Revised Code.

Sec. 3319.291. (A) When any person initially applies for any certificate, license, or permit described in division (B) of section 3301.071, in section 3301.074, 3319.088, ~~or 3319.29, 3319.302, or 3319.304~~, or in division (A) of section 3319.303 of the Revised Code, the state board of education shall require the person to submit with the application two complete sets of fingerprints and written permission that authorizes the superintendent of public instruction to forward the fingerprints to the bureau of criminal identification and investigation pursuant to division (F) of section 109.57 of the Revised Code and that authorizes that bureau to forward the fingerprints to the federal bureau of investigation for purposes of obtaining any criminal records that the federal bureau maintains on the person.

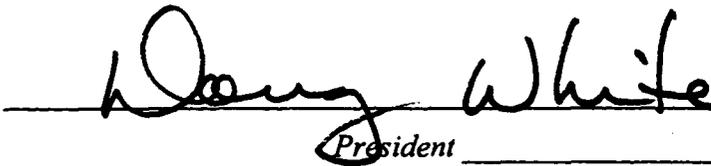
(B) The state board of education or the superintendent of public instruction ~~may shall~~ request the superintendent of the bureau of criminal identification and investigation to ~~do either or both of the following:~~

~~(1) Investigate~~ investigate and determine whether the bureau has any information, gathered pursuant to division (A) of section 109.57 of the Revised Code, pertaining to any person submitting fingerprints and written

SECTION 7. Section 2152.18 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 247 and Sub. H.B. 393 of the 124th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.



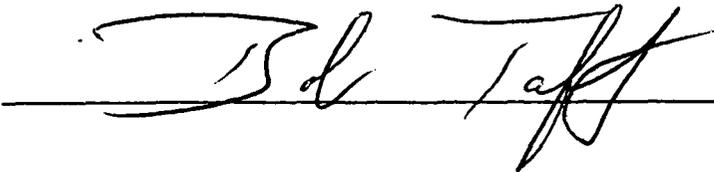
Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed May 26, 20 04

Approved June 17, 20 04



Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

James W. Burley

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
17th day of June, A. D. 20 04.

Joseph Blackwell

Secretary of State.

File No. 102

Effective Date 09/16/04; Certain provisions
eff. 06/17/04

**LAWS
OF
OHIO
INCLUDING
APPROPRIATION ACTS**

150

**PART I
FOR
2003-2004**

AN ACT

To amend sections 9.01, 9.83, 101.34, 101.72, 101.82, 102.02, 109.32, 109.57, 109.572, 117.101, 117.16, 117.44, 117.45, 121.04, 121.08, 121.084, **121.41**, 121.48, 121.62, 122.011, 122.04, 122.08, 122.17, 122.171, 122.25, 122.651, 122.658, 122.87, 122.88, 123.01, 124.03, 124.15, 124.152, 124.181, **125.05**, **125.06**, **125.07**, 125.15, 125.91, 125.92, 125.93, 125.95, 125.96, 125.98, 127.16, 131.02, 131.23, 131.35, 145.38, 147.01, 147.37, 149.011, 149.30, 149.31, 149.33, 149.331, 149.332, 149.333, 149.34, 149.35, 153.65, 164.14, 164.27, 165.09, 166.16, 173.06, 173.061, 173.062, 173.07, 173.071, 173.14, 173.26, 175.03, 175.21, 175.22, 183.02, 306.35, 306.99, 307.86, 307.87, 307.93, 307.98, 307.981, 307.987, 311.17, 317.32, 321.24, 323.01, 323.13, 325.31, 329.03, 329.04, 329.05, 329.051, 329.06, 340.021, 340.03, 341.05, 341.25, 504.03, 504.04, 505.376, 507.09, 511.12, 515.01, 515.07, 521.05, 715.013, 718.01, 718.02, 718.05, 718.11, 718.14, 718.15, 718.151, 731.14, 731.141, 735.05, 737.03, 753.22, 901.17, 901.21, 901.22, 901.63, 902.11, 921.151, 927.53, 927.69, 929.01, 955.51, 1309.109, 1317.07, 1321.21, 1333.99, 1337.11, 1346.02, 1501.04, 1503.05, 1513.05, 1515.08, 1519.05, 1521.06, 1521.063, 1531.26, 1533.08, 1533.10, 1533.101, 1533.11, 1533.111, 1533.112, 1533.12, 1533.13, 1533.151, 1533.19, 1533.23, 1533.301, 1533.32, 1533.35, 1533.40, 1533.54, 1533.631, 1533.632, 1533.71, 1533.82, 1541.10, 1548.06, 1551.11, 1551.12, 1551.15, 1551.311, 1551.32, 1551.33, 1551.35, 1555.02.

**ALL THE ABOVE
BOXED MATERIAL IS
DISAPPROVED.**

6/26/13 Bob Taft
DATE GOVERNOR

notice issued under division (B)(3) of this section, or if that decision is appealed to the state board under division (B)(4) of this section and the state board affirms that decision, the date established in the resolution of the state board affirming the sponsor's decision.

(6) Any community school whose contract is terminated under this division shall not enter into a contract with any other sponsor.

(C) A child attending a community school whose contract has been terminated, nonrenewed, or suspended or that closes for any reason shall be admitted to the schools of the district in which the child is entitled to attend under section 3313.64 or 3313.65 of the Revised Code. Any deadlines established for the purpose of admitting students under section 3313.97 or 3313.98 of the Revised Code shall be waived for students to whom this division pertains.

(D) If a community school does not intend to renew a contract with its sponsor, the community school shall notify its sponsor in writing of that fact at least one hundred eighty days prior to the expiration of the contract. Such a community school may enter into a contract with a new sponsor in accordance with section 3314.03 of the Revised Code upon the expiration of the previous contract.

(E) A sponsor of a community school and the officers, directors, or employees of such a sponsor are not liable in damages in a tort or other civil action for harm allegedly arising from either of the following:

(1) A failure of the community school or any of its officers, directors, or employees to perform any statutory or common law duty or responsibility or any other legal obligation;

(2) An action or omission of the community school or any of its officers, directors, or employees that results in harm.

~~(E)~~(F) As used in this section:

(1) "Harm" means injury, death, or loss to person or property.

(2) "Tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons.

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

(1) "Base formula amount" means the amount specified as such in a community school's financial plan for a school year pursuant to division (A)(15) of section 3314.03 of the Revised Code.

(2) "Cost-of-doing-business factor" has the same meaning as in section 3317.02 of the Revised Code.

(3) "IEP" means an individualized education program as defined in section 3323.01 of the Revised Code.

(4) "Applicable special education weight" means the multiple specified in section 3317.013 of the Revised Code for a handicap described in that section.

(5) "Applicable vocational education weight" means:

(a) For a student enrolled in vocational education programs or classes described in division (A) of section 3317.014 of the Revised Code, the multiple specified in that division:

(b) For a student enrolled in vocational education programs or classes described in division (B) of section 3317.014 of the Revised Code, the multiple specified in that division.

(6) "Entitled to attend school" means entitled to attend school in a district under section 3313.64 or 3313.65 of the Revised Code.

(7) A community school student is "included in the DPIA student count" of a school district if the student is entitled to attend school in the district and:

(a) For school years prior to fiscal year 2004, the student's family receives assistance under the Ohio works first program.

(b) For school years in and after fiscal year 2004, the student's family income does not exceed the federal poverty guidelines, as defined in section 5101.46 of the Revised Code, and the student's family receives family assistance, as defined in section 3317.029 of the Revised Code.

(8) "DPIA reduction factor" means the percentage figure, if any, for reducing the per pupil amount of disadvantaged pupil impact aid a community school is entitled to receive pursuant to divisions (D)(5) and (6) of this section in any year, as specified in the school's financial plan for the year pursuant to division (A)(15) of section 3314.03 of the Revised Code.

(9) "All-day kindergarten" has the same meaning as in section 3317.029 of the Revised Code.

(10) "SF-3 payment" means the sum of the payments to a school district in a fiscal year under divisions (A), (C)(J), (C)(4), (D), (E), and (F) of section 3317.022, divisions (J), (P), and (R) of section 3317.024, and sections 3317.029, 3317.0212, 3317.0213, 3317.0216, 3317.0217, 3317.04, 3317.05, 3317.052, and 3317.053 of the Revised Code after making the adjustments required by sections 3313.981 and 3313.979, divisions (B), (C), (D), (E), (K), (L), and (M) of section 3317.023, and division (C) of section 3317.20 of the Revised Code.

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

(1) The board of education of each city, exempted village, and local school district to annually report the number of students entitled to attend

school in the district who are enrolled in grades one through twelve in a community school established under this chapter, the number of students entitled to attend school in the district who are enrolled in kindergarten in a community school, the number of those kindergartners who are enrolled in all-day kindergarten in their community school, and for each child, the community school in which the child is enrolled.

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

(a) The number of students enrolled in grades one through twelve and the number of students enrolled in kindergarten in the school who are not receiving special education and related services pursuant to an IEP;

(b) The number of enrolled students in grades one through twelve and the number of enrolled students in kindergarten, who are receiving special education and related services pursuant to an IEP;

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

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

(e) ~~One-fourth~~ Twenty per cent of the number of students reported under divisions (B)(2)(a) and (b) of this section who are not reported under division (B)(2)(d) of this section but who are enrolled in vocational education programs or classes described in each of divisions (A) and (B) of section 3317.014 of the Revised Code at a joint vocational school district under a contract between the community school and the joint vocational school district and are entitled to attend school in a city, local, or exempted village school district whose territory is part of the territory of the joint vocational district;

(f) The number of enrolled preschool handicapped students receiving special education services in a state-funded unit;

(g) The community school's base formula amount;

(h) For each student, the city, exempted village, or local school district in which the student is entitled to attend school;

(i) Any DPIA reduction factor that applies to a school year.

(C) From the ~~payments~~ SF-3 payment made to a city, exempted village, or local school district ~~under Chapter 3317. of the Revised Code~~ and, if necessary, from the payment made to the district under sections 321.14

321.24 and 323.156 of the Revised Code, the department of education shall annually subtract ~~at the sum of the following amounts described in divisions (C)(1) to (6) of this section. However, the aggregate amount deducted under this division shall not exceed the sum of the district's SF-3 payment and its payment under sections 321.24 and 323.156 of the Revised Code.~~

(1) An amount equal to the sum of the amounts obtained when, for each community school where the district's students are enrolled, the number of the district's students reported under divisions (B)(2)(a), (b), and (e) of this section who are enrolled in grades one through twelve, and one-half the number of students reported under those divisions who are enrolled in kindergarten, in that community school is multiplied by the base formula amount of that community school as adjusted by the school district's cost-of-doing-business factor.

(2) The sum of the amounts calculated under divisions (C)(2)(a) and (b) of this section:

(a) For each of the district's students reported under division (B)(2)(c) of this section as enrolled in a community school in grades one through twelve and receiving special education and related services pursuant to an IEP for a handicap described in section 3317.013 of the Revised Code, the product of the applicable special education weight times the community school's base formula amount;

(b) For each of the district's students reported under division (B)(2)(c) of this section as enrolled in kindergarten in a community school and receiving special education and related services pursuant to an IEP for a handicap described in section 3317.013 of the Revised Code, one-half of the amount calculated as prescribed in division (C)(2)(a) of this section.

(3) For each of the district's students reported under division (B)(2)(d) of this section for whom payment is made under division (D)(4) of this section, the amount of that payment:

(4) An amount equal to the sum of the amounts obtained when, for each community school where the district's students are enrolled, the number of the district's students enrolled in that community school who are included in the district's DPIA student count is multiplied by the per pupil amount of disadvantaged pupil impact aid the school district receives that year pursuant to division (B) or (C) of section 3317.029 of the Revised Code, as adjusted by any DPIA reduction factor of that community school. If the district receives disadvantaged pupil impact aid under division (B) of that section, the per pupil amount of that aid is the quotient of the amount the district received under that division divided by the district's DPIA student

count, as defined in that section. If the district receives disadvantaged pupil impact aid under division (C) of section 3317.029 of the Revised Code, the per pupil amount of that aid is the per pupil dollar amount prescribed for the district in division (C)(1) or (2) of that section.

(5) An amount equal to the sum of the amounts obtained when, for each community school where the district's students are enrolled, the district's per pupil amount of aid received under division (E) of section 3317.029 of the Revised Code, as adjusted by any DPIA reduction factor of the community school, is multiplied by the sum of the following:

(a) The number of the district's students reported under division (B)(2)(a) of this section who are enrolled in grades one to three in that community school and who are not receiving special education and related services pursuant to an IEP;

(b) One-half of the district's students who are enrolled in all-day or any other kindergarten class in that community school and who are not receiving special education and related services pursuant to an IEP;

(c) One-half of the district's students who are enrolled in all-day kindergarten in that community school and who are not receiving special education and related services pursuant to an IEP.

The district's per pupil amount of aid under division (E) of section 3317.029 of the Revised Code is the quotient of the amount the district received under that division divided by the district's kindergarten through third grade ADM, as defined in that section.

(6) An amount equal to the per pupil state parity aid funding calculated for the school district under either division (C) or (D) of section 3317.0217 of the Revised Code multiplied by the sum of the number of students in grades one through twelve, and one-half of the number of students in kindergarten, who are entitled to attend school in the district and are enrolled in a community school as reported under division (B)(1) of this section.

(D) The department shall annually pay to a community school established under this chapter ~~at the sum of the following amounts described in divisions (D)(1) to (7) of this section. However, the sum of the payments to all community schools under divisions (D)(1), (2), (4), (5), (6), and (7) of this section for the students entitled to attend school in any particular school district shall not exceed the sum of that district's SF-3 payment and its payment under sections 321.24 and 323.156 of the Revised Code. If the sum of the payments calculated under those divisions for the students entitled to attend school in a particular school district exceeds the sum of that district's SF-3 payment and its payment under sections 321.24~~

and 323.156 of the Revised Code, the department shall calculate and apply a proration factor to the payments to all community schools under those divisions for the students entitled to attend school in that district.

(1) An amount equal to the sum of the amounts obtained when the number of students enrolled in grades one through twelve, plus one-half of the kindergarten students in the school, reported under divisions (B)(2)(a), (b), and (e) of this section who are not receiving special education and related services pursuant to an IEP for a handicap described in section 3317.013 of the Revised Code is multiplied by the community school's base formula amount, as adjusted by the cost-of-doing-business factor of the school district in which the student is entitled to attend school;

(2) The greater of the following:

(a) The aggregate amount that the department paid to the community school in fiscal year 1999 for students receiving special education and related services pursuant to IEPs, excluding federal funds and state disadvantaged pupil impact aid funds;

(b) The sum of the amounts calculated under divisions (D)(2)(b)(i) and (ii) of this section:

(i) For each student reported under division (B)(2)(c) of this section as enrolled in the school in grades one through twelve and receiving special education and related services pursuant to an IEP for a handicap described in section 3317.013 of the Revised Code, the following amount:

(the community school's base formula amount
X the cost-of-doing-business factor
of the district where the student
is entitled to attend school) +

(the applicable special education weight X
the community school's base formula amount);

(ii) For each student reported under division (B)(2)(c) of this section as enrolled in kindergarten and receiving special education and related services pursuant to an IEP for a handicap described in section 3317.013 of the Revised Code, one-half of the amount calculated under the formula prescribed in division (D)(2)(b)(i) of this section.

(3) An amount received from federal funds to provide special education and related services to students in the community school, as determined by the superintendent of public instruction.

(4) For each student reported under division (B)(2)(d) of this section as enrolled in vocational education programs or classes that are described in section 3317.014 of the Revised Code, are provided by the community school, and are comparable as determined by the superintendent of public

instruction to school district vocational education programs and classes eligible for state weighted funding under section 3317.014 of the Revised Code, an amount equal to the applicable vocational education weight times the community school's base formula amount times the percentage of time the student spends in the vocational education programs or classes.

(5) An amount equal to the sum of the amounts obtained when, for each school district where the community school's students are entitled to attend school, the number of that district's students enrolled in the community school who are included in the district's DPIA student count is multiplied by the per pupil amount of disadvantaged pupil impact aid that school district receives that year pursuant to division (B) or (C) of section 3317.029 of the Revised Code, as adjusted by any DPIA reduction factor of the community school. The per pupil amount of aid shall be determined as described in division (C)(4) of this section.

(6) An amount equal to the sum of the amounts obtained when, for each school district where the community school's students are entitled to attend school, the district's per pupil amount of aid received under division (E) of section 3317.029 of the Revised Code, as adjusted by any DPIA reduction factor of the community school, is multiplied by the sum of the following:

(a) The number of the district's students reported under division (B)(2)(a) of this section who are enrolled in grades one to three in that community school and who are not receiving special education and related services pursuant to an IEP;

(b) One-half of the district's students who are enrolled in all-day or any other kindergarten class in that community school and who are not receiving special education and related services pursuant to an IEP;

(c) One-half of the district's students who are enrolled in all-day kindergarten in that community school and who are not receiving special education and related services pursuant to an IEP.

The district's per pupil amount of aid under division (E) of section 3317.029 of the Revised Code shall be determined as described in division (C)(5) of this section.

(7) An amount equal to the sum of the amounts obtained when, for each school district where the community school's students are entitled to attend school, the district's per pupil amount of state parity aid funding calculated under either division (C) or (D) of section 3317.0217 of the Revised Code is multiplied by the sum of the number of that district's students enrolled in grades one through twelve, and one-half of the number of that district's students enrolled in kindergarten, in the community school as reported under division (B)(2)(a) and (b) of this section.

(E)(1) If a community school's costs for a fiscal year for a student receiving special education and related services pursuant to an IEP for a handicap described in divisions (B) to (F) of section 3317.013 of the Revised Code exceed the threshold catastrophic cost for serving the student as specified in division (C)(3)(b) of section 3317.022 of the Revised Code, the school may submit to the superintendent of public instruction documentation, as prescribed by the superintendent, of all its costs for that student. Upon submission of documentation for a student of the type and in the manner prescribed, the department shall pay to the community school an amount equal to the school's costs for the student in excess of the threshold catastrophic costs.

(2) The community school shall only report under division (E)(1) of this section, and the department shall only pay for, the costs of educational expenses and the related services provided to the student in accordance with the student's individualized education program. Any legal fees, court costs, or other costs associated with any cause of action relating to the student may not be included in the amount.

(F) A community school may apply to the department of education for preschool handicapped or gifted unit funding the school would receive if it were a school district. Upon request of its governing authority, a community school that received unit funding as a school district-operated school before it became a community school shall retain any units awarded to it as a school district-operated school provided the school continues to meet eligibility standards for the unit.

A community school shall be considered a school district and its governing authority shall be considered a board of education for the purpose of applying to any state or federal agency for grants that a school district may receive under federal or state law or any appropriations act of the general assembly. The governing authority of a community school may apply to any private entity for additional funds.

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

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

(I) No community school shall charge tuition for the enrollment of any student.

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

portion of the payments to be received by the school pursuant to division (D) of this section. The school may issue notes to evidence such borrowing. The proceeds of the notes shall be used only for the purposes for which the anticipated receipts may be lawfully expended by the school.

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

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

(K) For purposes of determining the number of students for which divisions (D)(5) and (6) of this section applies in any school year, a community school may submit to the department of job and family services, no later than the first day of March, a list of the students enrolled in the school. For each student on the list, the community school shall indicate the student's name, address, and date of birth and the school district where the student is entitled to attend school. Upon receipt of a list under this division, the department of job and family services shall determine, for each school district where one or more students on the list is entitled to attend school, the number of students residing in that school district who were included in the department's report under section 3317.10 of the Revised Code. The department shall make this determination on the basis of information readily available to it. Upon making this determination and no later than ninety days after submission of the list by the community school, the department shall report to the state department of education the number of students on the list who reside in each school district who were included in the department's report under section 3317.10 of the Revised Code. In complying with this division, the department of job and family services shall not report to the state department of education any personally identifiable information on any student.

(L) The department of education shall adjust the amounts subtracted and paid under divisions (C) and (D) of this section to reflect any enrollment of students in community schools for less than the equivalent of a full school year. The state board of education within ninety days after ~~the effective date of this amendment~~ April 8, 2003, shall adopt in accordance with Chapter 119. of the Revised Code rules governing the payments to community schools under this section including initial payments in a school year and adjustments and reductions made in subsequent periodic payments to community schools and corresponding deductions from school district accounts as provided under divisions (C) and (D) of this section. For purposes of this section:

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

(2) A student shall be considered to be enrolled in a community school during a school year for the period of time between the date on which the school both has received documentation of the student's enrollment from a parent and has commenced participation in learning opportunities as defined in the contract with the sponsor. For purposes of applying this division to a community school student, "learning opportunities" shall be 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. Any student's instruction time in non-classroom-based learning opportunities shall be certified by an employee of the community school. A student's enrollment shall be considered to cease on the date on which any of the following occur:

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

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

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

(3) A student's percentage of full-time equivalency shall be considered to be the percentage the hours of learning opportunity offered to that student is of nine hundred and twenty hours.

(M) The department of education shall reduce the amounts paid under division (D) of this section to reflect payments made to colleges under division (B) of section 3365.07 of the Revised Code.

(N)(1) No student shall be considered enrolled in any internet- or computer-based community school unless the both of the following conditions are satisfied:

(a) The student possesses or has been provided with all required hardware and software materials and all such materials are fully operational and the so that the student is capable of fully participating in the learning opportunities specified in the contract between the school and the school's sponsor as required by division (A)(23) of section 3314.03 of the Revised Code;

(b) The school is in compliance with division (A)(1) or (2) of section 3314.032 of the Revised Code, relative to such student. In

(2) In accordance with policies adopted jointly by the superintendent of public instruction and the auditor of state, the department shall reduce the amounts otherwise payable under division (D) of this section to any internet- or computer-based community school that includes in its program the provision of computer hardware and software materials to each student, if such hardware and software materials have not been delivered, installed, and activated for all students in a timely manner or other educational materials or services have not been provided according to the contract between the individual community school and its sponsor.

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

The superintendent, auditor of state, and the governor shall jointly make recommendations to the general assembly for legislative changes that may be required to assure fiscal and academic accountability for such internet- or computer-based schools.

(O)(1) If 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 governing authority of the community school and its sponsor within ninety days of the end of the community school's fiscal year, unless extended for a period not to exceed thirty additional days for one of the following reasons:

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

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

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

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

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

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

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

(3) If it is decided that the community school owes moneys to the state, the department shall deduct such amount from the school's future payments in accordance with guidelines issued by the superintendent of public instruction.

Sec. 3314.083. If the department of education pays a joint vocational school district under division (G)(4) of section 3317.16 of the Revised Code for excess costs of providing special education and related services to a handicapped student who is enrolled in a community school, as calculated under division (G)(2) of that section, the department shall deduct the amount of that payment from the amount calculated for payment to the community school under section 3314.08 of the Revised Code.

Sec. 3314.17. (A) Each community school established under this chapter shall participate in the statewide education management information system established under section 3301.0714 of the Revised Code. All provisions of that section and the rules adopted under that section apply to each community school as if it were a school district, except as modified for community schools under division (B) of this section.

(B) The rules adopted by the state board of education under section 3301.0714 of the Revised Code may distinguish methods and timelines for community schools to annually report data, which methods and timelines differ from those prescribed for school districts. Any methods and timelines prescribed for community schools shall be appropriate to the academic schedule and financing of community schools. The guidelines, however, shall not modify the actual data required to be reported under that section.

(C) Each fiscal officer appointed under section 3314.011 of the Revised Code is responsible for annually reporting the community school's data under section 3301.0714 of the Revised Code. If the superintendent of public instruction determines that a community school fiscal officer has willfully failed to report data or has willfully reported erroneous, inaccurate, or incomplete data in any year, or has negligently reported erroneous, inaccurate, or incomplete data in the current and any previous year, the superintendent may impose a civil penalty of one hundred dollars on the fiscal officer after providing the officer with notice and an opportunity for a hearing in accordance with Chapter 119. of the Revised Code. The superintendent's authority to impose civil penalties under this division does not preclude the state board of education from suspending or revoking the license of a community school employee under division (N) of section 3301.0714 of the Revised Code.

(D) No community school shall acquire, change, or update its student

SECTION 242. If any item of law that constitutes the whole or part of a codified or uncodified section of law contained in this act, or if any application of any item of law that constitutes the whole or part of a codified or uncodified section of law contained in this act, is held invalid, the invalidity does not affect other items of law or applications of items of law that can be given effect without the invalid item of law or application. To this end, the items of law of which the codified and uncodified sections contained in this act are composed, and their applications, are independent and severable.



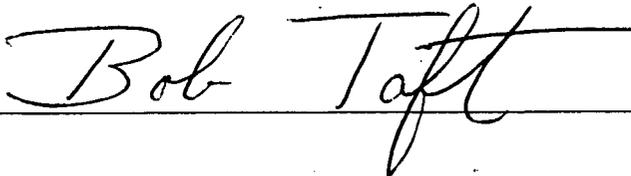
Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed June 19, 2003

Approved June 26, 2003



Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

James W. Bowley

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 27th day of June, A. D. 2003.

Elizabeth B. Blackwell

Secretary of State.

File No. 12

Effective Date June 26, 2003; certain provisions effective September 26, 2003 or on other dates

AN ACT

To amend sections 9.01, 9.83, 101.34, 101.72, 101.82, 102.02, 109.32, 109.57, 109.572, 117.101, 117.16, 117.44, 117.45, 121.04, 121.08, 121.084, 121.41, 121.48, 121.62, 122.011, 122.04, 122.08, 122.17, 122.171, 122.25, 122.651, 122.658, 122.87, 122.88, 123.01, 124.03, 124.15, 124.152, 124.181, 125.05, 125.06, 125.07, 125.15, 125.91, 125.92, 125.93, 125.95, 125.96, 125.98, 127.16, 131.02, 131.23, 131.35, 145.38, 147.01, 147.37, 149.011, 149.30, 149.31, 149.33, 149.331, 149.332, 149.333, 149.34, 149.35, 153.65, 164.14, 164.27, 165.09, 166.16, 173.06, 173.061, 173.062, 173.07, 173.071, 173.14, 173.26, 175.03, 175.21, 175.22, 183.02, 306.35, 306.99, 307.86, 307.87, 307.93, 307.98, 307.981, 307.987, 311.17, 317.32, 321.24, 323.01, 323.13, 325.31, 329.03, 329.04, 329.05, 329.051, 329.06, 340.021, 340.03, 341.05, 341.25, 504.03, 504.04, 505.376, 507.09, 511.12, 515.01, 515.07, 521.05, 715.013, 718.01, 718.02, 718.05, 718.11, 718.14, 718.15, 718.151, 731.14, 731.141, 735.05, 737.03, 753.22, 901.17, 901.21, 901.22, 901.63, 902.11, 921.151, 927.53, 927.69, 929.01, 955.51, 1309.109, 1317.07, 1321.21, 1333.99, 1337.11, 1346.02, 1501.04, 1503.05, 1513.05, 1515.08, 1519.05, 1521.06, 1521.063, 1531.26, 1533.08, 1533.10, 1533.101, 1533.11, 1533.111, 1533.112, 1533.12, 1533.13, 1533.151, 1533.19, 1533.23, 1533.301, 1533.32, 1533.35, 1533.40, 1533.54, 1533.631, 1533.632, 1533.71, 1533.82, 1541.10, 1548.06, 1551.11, 1551.12, 1551.15, 1551.311, 1551.32, 1551.33, 1551.35, 1555.02,

osteopathic medicine at least once a week due to the instability of the child's medical condition.

(2) The child requires the services of a registered nurse on a daily basis.

(3) The child is at risk of institutionalization in a hospital, skilled nursing facility, or intermediate care facility for the mentally retarded.

(U) A child may be identified as "other health handicapped-major" if the child's condition meets the definition of "other health impaired" established in rules adopted by the state board of education prior to ~~the effective date of this amendment~~ July 1, 2001, and if either of the following apply:

(1) The child is identified as having a medical condition that is among those listed by the superintendent of public instruction as conditions where a substantial majority of cases fall within the definition of "medically fragile child." The superintendent of public instruction shall issue an initial list no later than September 1, 2001.

(2) The child is determined by the superintendent of public instruction to be a medically fragile child. A school district superintendent may petition the superintendent of public instruction for a determination that a child is a medically fragile child.

(V) A child may be identified as "other health handicapped-minor" if the child's condition meets the definition of "other health impaired" established in rules adopted by the state board of education prior to ~~the effective date of this amendment~~ July 1, 2001, but the child's condition does not meet either of the conditions specified in division (U)(1) or (2) of this section.

Sec. 3317.022. (A)(1) The department of education shall compute and distribute state base cost funding to each school district for the fiscal year in accordance with the following formula, making any adjustment required by division (A)(2) of this section and using the information obtained under section 3317.021 of the Revised Code in the calendar year in which the fiscal year begins.

Compute the following for each eligible district:

$$\{(\text{cost-of-doing-business factor X} \\ \text{the formula amount X (the greater of formula ADM} \\ \text{or three-year average formula ADM)}\} - \\ (.023 \text{ X recognized valuation})$$

If the difference obtained is a negative number, the district's computation shall be zero.

(2)(a) For each school district for which the tax exempt value of the district equals or exceeds twenty-five per cent of the potential value of the district, the department of education shall calculate the difference between

the district's tax exempt value and twenty-five per cent of the district's potential value.

(b) For each school district to which division (A)(2)(a) of this section applies, the department shall adjust the recognized valuation used in the calculation under division (A)(1) of this section by subtracting from it the amount calculated under division (A)(2)(a) of this section.

(B) As used in this section:

(1) The "total special education weight" for a district means the sum of the following amounts:

(a) The district's category one special education ADM multiplied by the multiple specified in division (A) of section 3317.013 of the Revised Code;

(b) The district's category two special education ADM multiplied by the multiple specified in division (B) of section 3317.013 of the Revised Code;

(c) The district's category three special education ADM multiplied by the multiple specified in division (C) of section 3317.013 of the Revised Code;

(d) The district's category four special education ADM multiplied by the multiple specified in division (D) of section 3317.013 of the Revised Code;

(e) The district's category five special education ADM multiplied by the multiple specified in division (E) of section 3317.013 of the Revised Code;

(f) The district's category six special education ADM multiplied by the multiple specified in division (F) of section 3317.013 of the Revised Code.

(2) "State share percentage" means the percentage calculated for a district as follows:

(a) Calculate the state base cost funding amount for the district for the fiscal year under division (A) of this section. If the district would not receive any state base cost funding for that year under that division, the district's state share percentage is zero.

(b) If the district would receive state base cost funding under that division, divide that amount by an amount equal to the following:

$$\frac{\text{Cost-of-doing-business factor X}}{\text{the formula amount X (the greater of formula ADM or three-year average formula ADM)}}$$

The resultant number is the district's state share percentage.

(3) "Related services" includes:

(a) Child study, special education supervisors and coordinators, speech and hearing services, adaptive physical development services, occupational or physical therapy, teacher assistants for handicapped children whose handicaps are described in division (B) of section 3317.013 or division (F)(3) of section 3317.02 of the Revised Code, behavioral intervention,

interpreter services, work study, nursing services, and specialized integrative services as those terms are defined by the department;

(b) Speech and language services provided to any student with a handicap, including any student whose primary or only handicap is a speech and language handicap;

(c) Any related service not specifically covered by other state funds but specified in federal law, including but not limited to, audiology and school psychological services;

(d) Any service included in units funded under former division (O)(1) of section 3317.023 of the Revised Code;

(e) Any other related service needed by handicapped children in accordance with their individualized education plans.

(4) The "total vocational education weight" for a district means the sum of the following amounts:

(a) The district's category one vocational education ADM multiplied by the multiple specified in division (A) of section 3317.014 of the Revised Code;

(b) The district's category two vocational education ADM multiplied by the multiple specified in division (B) of section 3317.014 of the Revised Code.

(C)(1) The department shall compute and distribute state special education and related services additional weighted costs funds to each school district in accordance with the following formula:

$$\begin{aligned} & \text{The district's state share percentage} \\ & \quad \times \text{the formula amount for the year} \\ & \quad \quad \text{for which the aid is calculated} \\ & \quad \times \text{the district's total special education weight} \end{aligned}$$

(2) The attributed local share of special education and related services additional weighted costs equals:

$$\begin{aligned} & (1 - \text{the district's state share percentage}) \times \\ & \quad \text{the district's total special education weight} \times \\ & \quad \quad \text{the formula amount} \end{aligned}$$

(3)(a) The department shall compute and pay in accordance with this division additional state aid to school districts for students in categories two through six special education ADM. If a district's costs for the fiscal year for a student in its categories two through six special education ADM exceed the threshold catastrophic cost for serving the student, the district may submit to the superintendent of public instruction documentation, as prescribed by the superintendent, of all its costs for that student. Upon submission of documentation for a student of the type and in the manner

prescribed, the department shall pay to the district an amount equal to the sum of the following:

(i) One-half of the district's costs for the student in excess of the threshold catastrophic cost;

(ii) The product of one-half of the district's costs for the student in excess of the threshold catastrophic cost multiplied by the district's state share percentage.

(b) For purposes of division (C)(3)(a) of this section, the threshold catastrophic cost for serving a student equals:

(i) For a student in the school district's category two, three, four, or five special education ADM, twenty-five thousand dollars in fiscal year 2002 and twenty-five thousand seven hundred dollars in fiscal ~~year~~ years 2003, 2004, and 2005;

(ii) For a student in the district's category six special education ADM, thirty thousand dollars in fiscal year 2002 and thirty thousand eight hundred forty dollars in fiscal ~~year~~ years 2003, 2004, and 2005.

~~The threshold catastrophic costs for fiscal year 2003 represent a two and eight tenths per cent inflationary increase over fiscal year 2002.~~

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

~~(5)(4)(a)~~ As used in this division, the "personnel allowance" means thirty thousand dollars in fiscal years 2002 ~~and~~, 2003, 2004, and 2005.

(b) For the provision of speech language pathology services to students, including students who do not have individualized education programs prepared for them under Chapter 3323. of the Revised Code, and for no other purpose, the department of education shall pay each school district an amount calculated under the following formula:

$$\begin{aligned} & (\text{formula ADM divided by } 2000) \times \\ & \text{the personnel allowance} \times \text{the state share percentage} \end{aligned}$$

(5) In any fiscal year, a school district shall spend for purposes that the department designates as approved for special education and related services expenses at least the amount calculated as follows:

$$\begin{aligned} & (\text{cost-of-doing-business factor} \times \\ & \text{formula amount} \times \text{the sum of categories} \\ & \text{one through six special education ADM}) + \\ & (\text{total special education weight} \times \text{formula amount}) \end{aligned}$$

The purposes approved by the department for special education expenses shall include, but shall not be limited to, identification of handicapped children, compliance with state rules governing the education of handicapped children and prescribing the continuum of program options for handicapped children, provision of speech language pathology services, and the portion of the school district's overall administrative and overhead costs that are attributable to the district's special education student population.

The department shall require school districts to report data annually to allow for monitoring compliance with division (C)(5) of this section. The department shall annually report to the governor and the general assembly the amount of money spent by each school district for special education and related services.

(6) In any fiscal year, a school district shall spend for the provision of speech language pathology services not less than the sum of the amount calculated under division (C)(1) of this section for the students in the district's category one special education ADM and the amount calculated under division (C)(4) of this section.

(D)(1) As used in this division:

(a) "Daily bus miles per student" equals the number of bus miles traveled per day, divided by transportation base.

(b) "Transportation base" equals total student count as defined in section 3301.011 of the Revised Code, minus the number of students enrolled in preschool handicapped units, plus the number of nonpublic school students included in transportation ADM.

(c) "Transported student percentage" equals transportation ADM divided by transportation base.

(d) "Transportation cost per student" equals total operating costs for board-owned or contractor-operated school buses divided by transportation base.

(2) Analysis of student transportation cost data has resulted in a finding that an average efficient transportation use cost per student can be calculated by means of a regression formula that has as its two independent variables the number of daily bus miles per student and the transported student percentage. For fiscal year 1998 transportation cost data, the average efficient transportation use cost per student is expressed as follows:

$$51.79027 + (139.62626 \times \text{daily bus miles per student}) + (116.25573 \times \text{transported student percentage})$$

The department of education shall annually determine the average efficient transportation use cost per student in accordance with the principles

stated in division (D)(2) of this section, updating the intercept and regression coefficients of the regression formula modeled in this division, based on an annual statewide analysis of each school district's daily bus miles per student, transported student percentage, and transportation cost per student data. The department shall conduct the annual update using data, including daily bus miles per student, transported student percentage, and transportation cost per student data, from the prior fiscal year. The department shall notify the office of budget and management of such update by the fifteenth day of February of each year.

(3) In addition to funds paid under divisions (A), (C), and (E) of this section, each district with a transported student percentage greater than zero shall receive a payment equal to a percentage of the product of the district's transportation base from the prior fiscal year times the annually updated average efficient transportation use cost per student, times an inflation factor of two and eight tenths per cent to account for the one-year difference between the data used in updating the formula and calculating the payment and the year in which the payment is made. The percentage shall be the following percentage of that product specified for the corresponding fiscal year:

FISCAL YEAR	PERCENTAGE
2000	52.5%
2001	55%
2002	57.5%
2003 and thereafter	The greater of 60% or the district's state share percentage

The payments made under division (D)(3) of this section each year shall be calculated based on all of the same prior year's data used to update the formula.

(4) In addition to funds paid under divisions (D)(2) and (3) of this section, a school district shall receive a rough road subsidy if both of the following apply:

- (a) Its county rough road percentage is higher than the statewide rough road percentage, as those terms are defined in division (D)(5) of this section;
- (b) Its district student density is lower than the statewide student density, as those terms are defined in that division.

(5) The rough road subsidy paid to each district meeting the qualifications of division (D)(4) of this section shall be calculated in accordance with the following formula:

$$\text{(per rough mile subsidy X total rough road miles) X density multiplier}$$

where:

(a) "Per rough mile subsidy" equals the amount calculated in accordance with the following formula:

$$0.75 - \{0.75 \times [(\text{maximum rough road percentage} - \text{county rough road percentage}) / (\text{maximum rough road percentage} - \text{statewide rough road percentage})]\}$$

(i) "Maximum rough road percentage" means the highest county rough road percentage in the state.

(ii) "County rough road percentage" equals the percentage of the mileage of state, municipal, county, and township roads that is rated by the department of transportation as type A, B, C, E2, or F in the county in which the school district is located or, if the district is located in more than one county, the county to which it is assigned for purposes of determining its cost-of-doing-business factor.

(iii) "Statewide rough road percentage" means the percentage of the statewide total mileage of state, municipal, county, and township roads that is rated as type A, B, C, E2, or F by the department of transportation.

(b) "Total rough road miles" means a school district's total bus miles traveled in one year times its county rough road percentage.

(c) "Density multiplier" means a figure calculated in accordance with the following formula:

$$1 - [(\text{minimum student density} - \text{district student density}) / (\text{minimum student density} - \text{statewide student density})]$$

(i) "Minimum student density" means the lowest district student density in the state.

(ii) "District student density" means a school district's transportation base divided by the number of square miles in the district.

(iii) "Statewide student density" means the sum of the transportation bases for all school districts divided by the sum of the square miles in all school districts.

(6) In addition to funds paid under divisions (D)(2) to (5) of this section, each district shall receive in accordance with rules adopted by the state board of education a payment for students transported by means other than board-owned or contractor-operated buses and whose transportation is not funded under division (J) of section 3317.024 of the Revised Code. The rules shall include provisions for school district reporting of such students.

(E)(1) The department shall compute and distribute state vocational education additional weighted costs funds to each school district in accordance with the following formula:

state share percentage X
the formula amount X
total vocational education weight

In any fiscal year, a school district receiving funds under division (E)(1) of this section shall spend those funds only for the purposes that the department designates as approved for vocational education expenses. Vocational educational expenses approved by the department shall include only expenses connected to the delivery of career-technical programming to career-technical students. The department shall require the school district to report data annually so that the department may monitor the district's compliance with the requirements regarding the manner in which funding received under division (E)(1) of this section may be spent.

(2) The department shall compute for each school district state funds for vocational education associated services in accordance with the following formula:

state share percentage X .05 X
the formula amount X the sum of categories one and two
vocational education ADM

In any fiscal year, a school district receiving funds under division (E)(2) of this section, or through a transfer of funds pursuant to division (L) of section 3317.023 of the Revised Code, shall spend those funds only for the purposes that the department designates as approved for vocational education associated services expenses, which may include such purposes as apprenticeship coordinators, coordinators for other vocational education services, vocational evaluation, and other purposes designated by the department. The department may deny payment under division (E)(2) of this section to any district that the department determines is not operating those services or is using funds paid under division (E)(2) of this section, or through a transfer of funds pursuant to division (L) of section 3317.023 of the Revised Code, for other purposes.

(F) ~~Beginning in fiscal year 2003, the~~ The actual local share in any fiscal year for the combination of special education and related services additional weighted costs funding calculated under division (C)(1) of this section, transportation funding calculated under divisions (D)(2) and (3) of this section, and vocational education and associated services additional weighted costs funding calculated under divisions (E)(1) and (2) of this section shall not exceed for any school district the product of three and three-tenths mills times the district's recognized valuation. ~~Beginning in fiscal year 2003, the~~ The department annually shall pay each school district as an excess cost supplement any amount by which the sum of the district's

attributed local shares for that funding exceeds that product. For purposes of calculating the excess cost supplement:

(1) The attributed local share for special education and related services additional weighted costs funding is the amount specified in division (C)(2) of this section.

(2) The attributed local share of transportation funding equals the difference of the total amount calculated for the district using the formula developed under division (D)(2) of this section minus the actual amount paid to the district after applying the percentage specified in division (D)(3) of this section.

(3) The attributed local share of vocational education and associated services additional weighted costs funding is the amount determined as follows:

$$(1 - \text{state share percentage}) \times \\ [(\text{total vocational education weight} \times \text{the formula amount}) + \\ \text{the payment under division (E)(2) of this section}]$$

Sec. 3317.023. (A) Notwithstanding section 3317.022 of the Revised Code, the amounts required to be paid to a district under this chapter shall be adjusted by the amount of the computations made under divisions (B) to ~~(L)~~(M) of this section.

As used in this section:

(1) "Classroom teacher" means a licensed employee who provides direct instruction to pupils, excluding teachers funded from money paid to the district from federal sources; educational service personnel; and vocational and special education teachers.

(2) "Educational service personnel" shall not include such specialists funded from money paid to the district from federal sources or assigned full-time to vocational or special education students and classes and may only include those persons employed in the eight specialist areas in a pattern approved by the department of education under guidelines established by the state board of education.

(3) "Annual salary" means the annual base salary stated in the state minimum salary schedule for the performance of the teacher's regular teaching duties that the teacher earns for services rendered for the first full week of October of the fiscal year for which the adjustment is made under division (C) of this section. It shall not include any salary payments for supplemental teachers contracts.

(4) "Regular student population" means the formula ADM plus the number of students reported as enrolled in the district pursuant to division (A)(1) of section 3313.981 of the Revised Code; minus the number of

SECTION 242. If any item of law that constitutes the whole or part of a codified or uncodified section of law contained in this act, or if any application of any item of law that constitutes the whole or part of a codified or uncodified section of law contained in this act, is held invalid, the invalidity does not affect other items of law or applications of items of law that can be given effect without the invalid item of law or application. To this end, the items of law of which the codified and uncodified sections contained in this act are composed, and their applications, are independent and severable.



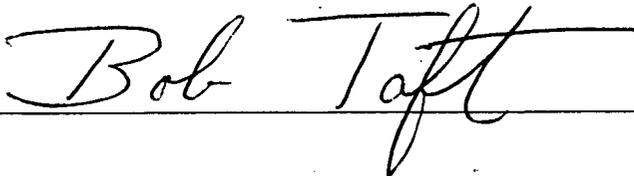
Speaker _____ of the House of Representatives.



President _____ of the Senate.

Passed June 19, 2003

Approved June 26, 2003



Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

James W. Bowley

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 27th day of June, A. D. 2003.

Elizabeth B. Blodgett

Secretary of State.

File No. 12

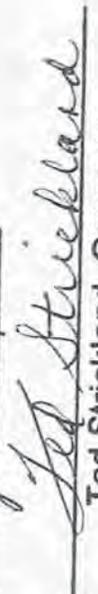
Effective Date June 26, 2003; certain provisions effective September 26, 2003 or on other dates

(127th General Assembly)
(Amended Substitute House Bill Number 119)

AN ACT

To amend sections 9.821, 9.822, 9.823, 9.83, 107.12, 107.40, 109.57, 109.572, 109.93, 111.18, 117.11, 119.07, 120.33, 121.48, 121.51, 122.17, 122.171, 122.602, 122.652, 124.152, 125.04, 125.45, 125.93, 125.96, 125.97, 125.98, 126.07, 126.08, 126.16, 126.21, 126.22, 127.16, 131.44, 133.01, 133.081, 149.311, 151.08, 151.40, 156.02, 164.03, 164.08, 164.09, 166.08, 167.04, 173.04, 173.35, 173.71, 173.85, 173.86, 174.03, 174.06, 183.01, 183.021, 183.17, 183.33, 183.34, 183.35, 305.31, 307.672, 307.695, 307.98, 307.981, 308.04, 317.08, 319.202, 319.54, 322.01, 323.131, 323.151, 323.152, 323.153, 323.154, 325.31, 329.04, 329.05, 329.14, 340.03, 505.37, 505.376, 505.705, 517.08, 709.01, 711.001, 711.05, 711.10, 711.131, 718.01, 718.03, 718.13, 901.171, 1503.05, 1504.02, 1506.01, 1506.99, 1513.08, 1513.18, 1514.081, 1514.40, 1521.01, 1521.20, 1521.21, 1521.22, 1521.23, 1521.24, 1521.25, 1521.26, 1521.27, 1521.28, 1521.29, 1521.99, 1531.06, 1531.35, 1555.08, 1557.03, 1901.34, 2113.041, 2117.061, 2117.25, 2151.362, 2305.2341, 2744.02, 2913.40, 2921.42, 2927.023, 2935.03, 3109.04, 3109.041, 3119.022, 3119.023, 3119.05, 3119.27, 3119.29, 3119.30, 3119.32, 3125.12, 3301.011, 3301.07, 3301.0711, 3301.0714, 3301.0718, 3301.12, 3301.311, 3301.53, 3302.03, 3302.10, 3307.01, 3307.31, 3309.01, 3309.51, 3310.41, 3311.24, 3311.51, 3311.521, 3313.532, 3313.537, 3313.603, 3313.615, 3313.64, 3313.646, 3313.66, 3313.661, 3313.841, 3313.843, 3313.97, 3313.974, 3313.977, 3313.978.

The above boxed and initialed text was disapproved.

Date: June 30, 2007

 Ted Strickland, Governor

that has a combination of an income factor of 1.0 or less, a poverty index of 1.0 or greater, and a fiscal year 2005 cost-of-doing-business factor of 1.0375 or greater, in accordance with the following formula:

$$\text{Payment percentage} \times \$60,000 \times \\ (1 - \text{income factor}) \times 4/15 \times 0.023$$

Where:

(1) "Poverty index" has the same meaning as in section 3317.029 of the Revised Code.

(2) "Payment percentage," for purposes of division (D) of this section, equals 50% in fiscal year 2002 and 100% after fiscal year 2002.

(3) "Fiscal year 2005 cost-of-doing-business factor" means the cost-of-doing-business factor in effect for fiscal year 2005 designated under former division (N) of section 3317.02 of the Revised Code as that division existed in fiscal year 2005.

(E) Pay each district that has a combination of an income factor of 1.0 or less, a poverty index of 1.0 or greater, and a fiscal year 2005 cost-of-doing-business factor of 1.0375 or greater, the greater of the following:

(1) The product of the district's per pupil parity aid calculated under division (C) of this section times its net formula ADM;

(2) The product of its per pupil alternative parity aid calculated under division (D) of this section times its net formula ADM.

(F) Pay every other district the product of its per pupil parity aid calculated under division (C) of this section times its net formula ADM.

(G) As used in divisions (E) and (F) of this section, "net formula ADM" means formula ADM minus the number of internet- and computer-based community school students and scholarship students reported under divisions (B)(3)(e), (f), and (g) of section 3317.03 of the Revised Code.

Sec. 3317.03. Notwithstanding divisions (A)(1), (B)(1), and (C) of this section, except as provided in division (A)(2)(h) of this section, any student enrolled in kindergarten more than half time shall be reported as one-half student under this section.

(A) The superintendent of each city and exempted village school district and of each educational service center shall, for the schools under the superintendent's supervision, certify to the state board of education on or before the fifteenth day of October in each year for the first full school week in October the formula ADM. Beginning in fiscal year 2007, each superintendent also shall certify to the state board, for the schools under the superintendent's supervision, the formula ADM for the first full week in February. If a school under the superintendent's supervision is closed for one

or more days during that week due to hazardous weather conditions or other circumstances described in the first paragraph of division (B) of section 3317.01 of the Revised Code, the superintendent may apply to the superintendent of public instruction for a waiver, under which the superintendent of public instruction may exempt the district superintendent from certifying the formula ADM for that school for that week and specify an alternate week for certifying the formula ADM of that school.

The formula ADM shall consist of the average daily membership during such week of the sum of the following:

(1) On an FTE basis, the number of students in grades kindergarten through twelve receiving any educational services from the district, except that the following categories of students shall not be included in the determination:

(a) Students enrolled in adult education classes;

(b) Adjacent or other district students enrolled in the district under an open enrollment policy pursuant to section 3313.98 of the Revised Code;

(c) Students receiving services in the district pursuant to a compact, cooperative education agreement, or a contract, but who are entitled to attend school in another district pursuant to section 3313.64 or 3313.65 of the Revised Code;

(d) Students for whom tuition is payable pursuant to sections 3317.081 and 3323.141 of the Revised Code;

(e) Students receiving services in the district through a scholarship awarded under either section 3310.41 or sections 3310.51 to 3310.63 of the Revised Code. *JS*

(2) On an FTE basis, except as provided in division (A)(2)(h) of this section, the number of students entitled to attend school in the district pursuant to section 3313.64 or 3313.65 of the Revised Code, but receiving educational services in grades kindergarten through twelve from one or more of the following entities:

(a) A community school pursuant to Chapter 3314. of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in such community school;

(b) An alternative school pursuant to sections 3313.974 to 3313.979 of the Revised Code as described in division (I)(2)(a) or (b) of this section;

(c) A college pursuant to Chapter 3365. of the Revised Code, except when the student is enrolled in the college while also enrolled in a community school pursuant to Chapter 3314. or a science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code;

The above boxed and initialed text was disapproved.

Date: June 30, 2007

Ted Strickland
Ted Strickland, Governor

(d) An adjacent or other school district under an open enrollment policy adopted pursuant to section 3313.98 of the Revised Code;

(e) An educational service center or cooperative education district;

(f) Another school district under a cooperative education agreement, compact, or contract;

(g) A chartered nonpublic school with a scholarship paid under section 3310.08 of the Revised Code;

(h) An alternative public provider or a registered private provider with a scholarship awarded under either section 3310.41 or sections 3310.51 to 3310.63 of the Revised Code. Each such scholarship student who is enrolled in kindergarten shall be counted as one full-time-equivalent student. *W*

As used in this section, "alternative public provider" and "registered private provider" have the same meanings as in section 3310.41 or 3310.51 of the Revised Code. as applicable. *W*

(i) A science, technology, engineering, and mathematics school established under Chapter 3326, of the Revised Code, including any participation in a college pursuant to Chapter 3365, of the Revised Code while enrolled in the school.

(3) Twenty per cent of the number of students enrolled in a joint vocational school district or under a vocational education compact, excluding any students entitled to attend school in the district under section 3313.64 or 3313.65 of the Revised Code who are enrolled in another school district through an open enrollment policy as reported under division (A)(2)(d) of this section and then enroll in a joint vocational school district or under a vocational education compact;

(4) The number of ~~handicapped~~ children with disabilities, other than ~~handicapped~~ preschool children with disabilities, entitled to attend school in the district pursuant to section 3313.64 or 3313.65 of the Revised Code who are placed by the district with a county MR/DD board, minus the number of such children placed with a county MR/DD board in fiscal year 1998. If this calculation produces a negative number, the number reported under division (A)(4) of this section shall be zero.

(5) Beginning in fiscal year 2007, in the case of the report submitted for the first full week in February, or the alternative week if specified by the superintendent of public instruction, the number of students reported under division (A)(1) or (2) of this section for the first full week of the preceding October but who since that week have received high school diplomas.

(B) To enable the department of education to obtain the data needed to complete the calculation of payments pursuant to this chapter, in addition to the formula ADM, each superintendent shall report separately the following

The above boxed and initialed text was disapproved.

Date: June 30, 2007

Ted Strickland

Ted Strickland, Governor

student counts for the same week for which formula ADM is certified:

(1) The total average daily membership in regular day classes included in the report under division (A)(1) or (2) of this section for kindergarten, and each of grades one through twelve in schools under the superintendent's supervision;

(2) The number of all ~~handicapped~~ preschool children with disabilities enrolled as of the first day of December in classes in the district that are eligible for approval under division (B) of section 3317.05 of the Revised Code and the number of those classes, which shall be reported not later than the fifteenth day of December, in accordance with rules adopted under that section;

(3) The number of children entitled to attend school in the district pursuant to section 3313.64 or 3313.65 of the Revised Code who are:

(a) Participating in a pilot project scholarship program established under sections 3313.974 to 3313.979 of the Revised Code as described in division (I)(2)(a) or (b) of this section;

(b) Enrolled in a college under Chapter 3365. of the Revised Code, except when the student is enrolled in the college while also enrolled in a community school pursuant to Chapter 3314. or a science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code;

(c) Enrolled in an adjacent or other school district under section 3313.98 of the Revised Code;

(d) Enrolled in a community school established under Chapter 3314. of the Revised Code that is not an internet- or computer-based community school as defined in section 3314.02 of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in such community school;

(e) Enrolled in an internet- or computer-based community school, as defined in section 3314.02 of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in the school;

(f) Enrolled in a chartered nonpublic school with a scholarship paid under section 3310.08 of the Revised Code;

(g) Enrolled in kindergarten through grade twelve in an alternative public provider or a registered private provider with a scholarship awarded under either section 3310.41 or sections 3310.51 to 3310.63 of the Revised Code; *JS*

(h) Enrolled as a ~~handicapped~~ preschool child with a disability in an alternative public provider or a registered private provider with a

The above boxed and initialed text was disapproved.

Date: June 30 2007

Ted Strickland
Ted Strickland, Governor

scholarship awarded under section 3310.41 of the Revised Code;

(i) Participating in a program operated by a county MR/DD board or a state institution;

(j) Enrolled in a science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code, including any participation in a college pursuant to Chapter 3365. of the Revised Code while enrolled in the school.

(4) The number of pupils enrolled in joint vocational schools;

(5) The combined average daily membership of handicapped children with disabilities reported under division (A)(1) or (2) of this section receiving special education services for the category one handicap disability described in division (A) of section 3317.013 of the Revised Code, including children attending a special education program operated by an alternative public provider or a registered private provider with a scholarship awarded under sections 3310.51 to 3310.63 of the Revised Code;

JS

JS

JS

(6) The combined average daily membership of handicapped children with disabilities reported under division (A)(1) or (2) of this section receiving special education services for category two handicaps disabilities described in division (B) of section 3317.013 of the Revised Code, including children attending a special education program operated by an alternative public provider or a registered private provider with a scholarship awarded under sections 3310.51 to 3310.63 of the Revised Code;

JS

JS

(7) The combined average daily membership of handicapped children with disabilities reported under division (A)(1) or (2) of this section receiving special education services for category three handicaps disabilities described in division (C) of section 3317.013 of the Revised Code, including children attending a special education program operated by an alternative public provider or a registered private provider with a scholarship awarded under sections 3310.51 to 3310.63 of the Revised Code;

JS

JS

(8) The combined average daily membership of handicapped children with disabilities reported under division (A)(1) or (2) of this section receiving special education services for category four handicaps disabilities described in division (D) of section 3317.013 of the Revised Code, including children attending a special education program operated by an alternative public provider or a registered private provider with a scholarship awarded under sections 3310.51 to 3310.63 of the Revised Code;

JS

JS

(9) The combined average daily membership of handicapped children with disabilities reported under division (A)(1) or (2) of this section

JS

The above boxed and initialed text was disapproved.

Date: June 30, 2007

Ted Strickland
Ted Strickland, Governor

receiving special education services for the category five ~~handicap~~ disabilities described in division (E) of section 3317.013 of the Revised Code, including children attending a special education program operated by an alternative public provider or a registered private provider with a scholarship awarded under sections 3310.51 to 3310.63 of the Revised Code; *SS*

(10) The combined average daily membership of ~~handicapped~~ children with disabilities reported under division (A)(1) or (2) and under division (B)(3)(h) of this section receiving special education services for category six ~~handicaps~~ disabilities described in division (F) of section 3317.013 of the Revised Code, including children attending a special education program operated by an alternative public provider or a registered private provider with a scholarship awarded under either section 3310.41 or sections 3310.51 to 3310.63 of the Revised Code; *SS*

(11) The average daily membership of pupils reported under division (A)(1) or (2) of this section enrolled in category one vocational education programs or classes, described in division (A) of section 3317.014 of the Revised Code, operated by the school district or by another district, other than a joint vocational school district, or by an educational service center, excluding any student reported under division (B)(3)(e) of this section as enrolled in an internet- or computer-based community school, notwithstanding division (C) of section 3317.02 of the Revised Code and division (C)(3) of this section;

(12) The average daily membership of pupils reported under division (A)(1) or (2) of this section enrolled in category two vocational education programs or services, described in division (B) of section 3317.014 of the Revised Code, operated by the school district or another school district, other than a joint vocational school district, or by an educational service center, excluding any student reported under division (B)(3)(e) of this section as enrolled in an internet- or computer-based community school, notwithstanding division (C) of section 3317.02 of the Revised Code and division (C)(3) of this section;

(13) The average number of children transported by the school district on board-owned or contractor-owned and -operated buses, reported in accordance with rules adopted by the department of education;

(14)(a) The number of children, other than ~~handicapped~~ preschool children with disabilities, the district placed with a county MR/DD board in fiscal year 1998;

(b) The number of ~~handicapped~~ children with disabilities, other than ~~handicapped~~ preschool children with disabilities, placed with a county

The above boxed and initialed text was disapproved.

Date: June 30 2007

Ted Strickland

Ted Strickland, Governor

MR/DD board in the current fiscal year to receive special education services for the category one ~~handicap~~ disability described in division (A) of section 3317.013 of the Revised Code;

(c) The number of ~~handicapped~~ children with disabilities, other than ~~handicapped~~ preschool children with disabilities, placed with a county MR/DD board in the current fiscal year to receive special education services for category two ~~handicaps~~ disabilities described in division (B) of section 3317.013 of the Revised Code;

(d) The number of ~~handicapped~~ children with disabilities, other than ~~handicapped~~ preschool children with disabilities, placed with a county MR/DD board in the current fiscal year to receive special education services for category three ~~handicaps~~ disabilities described in division (C) of section 3317.013 of the Revised Code;

(e) The number of ~~handicapped~~ children with disabilities, other than ~~handicapped~~ preschool children with disabilities, placed with a county MR/DD board in the current fiscal year to receive special education services for category four ~~handicaps~~ disabilities described in division (D) of section 3317.013 of the Revised Code;

(f) The number of ~~handicapped~~ children with disabilities, other than ~~handicapped~~ preschool children with disabilities, placed with a county MR/DD board in the current fiscal year to receive special education services for the category five ~~handicap~~ disabilities described in division (E) of section 3317.013 of the Revised Code;

(g) The number of ~~handicapped~~ children with disabilities, other than ~~handicapped~~ preschool children with disabilities, placed with a county MR/DD board in the current fiscal year to receive special education services for category six ~~handicaps~~ disabilities described in division (F) of section 3317.013 of the Revised Code.

(C)(1) Except as otherwise provided in this section for kindergarten students, the average daily membership in divisions (B)(1) to (12) of this section shall be based upon the number of full-time equivalent students. The state board of education shall adopt rules defining full-time equivalent students and for determining the average daily membership therefrom for the purposes of divisions (A), (B), and (D) of this section.

(2) A student enrolled in a community school established under Chapter 3314. or a science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code shall be counted in the formula ADM and, if applicable, the category one, two, three, four, five, or six special education ADM of the school district in which the student is entitled to attend school under section 3313.64 or 3313.65 of the Revised

Code for the same proportion of the school year that the student is counted in the enrollment of the community school or the science, technology, engineering, and mathematics school for purposes of section 3314.08 or 3326.33 of the Revised Code. Notwithstanding the number of students reported pursuant to division (B)(3)(d), (e), or (j) of this section, the department may adjust the formula ADM of a school district to account for students entitled to attend school in the district under section 3313.64 or 3313.65 of the Revised Code who are enrolled in a community school or a science, technology, engineering, and mathematics school for only a portion of the school year.

(3) No child shall be counted as more than a total of one child in the sum of the average daily memberships of a school district under division (A), divisions (B)(1) to (12), or division (D) of this section, except as follows:

(a) A child with a ~~handicap~~ disability described in section 3317.013 of the Revised Code may be counted both in formula ADM and in category one, two, three, four, five, or six special education ADM and, if applicable, in category one or two vocational education ADM. As provided in division (C) of section 3317.02 of the Revised Code, such a child shall be counted in category one, two, three, four, five, or six special education ADM in the same proportion that the child is counted in formula ADM.

(b) A child enrolled in vocational education programs or classes described in section 3317.014 of the Revised Code may be counted both in formula ADM and category one or two vocational education ADM and, if applicable, in category one, two, three, four, five, or six special education ADM. Such a child shall be counted in category one or two vocational education ADM in the same proportion as the percentage of time that the child spends in the vocational education programs or classes.

(4) Based on the information reported under this section, the department of education shall determine the total student count, as defined in section 3301.011 of the Revised Code, for each school district.

(D)(1) The superintendent of each joint vocational school district shall certify to the superintendent of public instruction on or before the fifteenth day of October in each year for the first full school week in October the formula ADM. Beginning in fiscal year 2007, each superintendent also shall certify to the state superintendent the formula ADM for the first full week in February. If a school operated by the joint vocational school district is closed for one or more days during that week due to hazardous weather conditions or other circumstances described in the first paragraph of division (B) of section 3317.01 of the Revised Code, the superintendent may apply to

the superintendent of public instruction for a waiver, under which the superintendent of public instruction may exempt the district superintendent from certifying the formula ADM for that school for that week and specify an alternate week for certifying the formula ADM of that school.

The formula ADM, except as otherwise provided in this division, shall consist of the average daily membership during such week, on an FTE basis, of the number of students receiving any educational services from the district, including students enrolled in a community school established under Chapter 3314. or a science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code who are attending the joint vocational district under an agreement between the district board of education and the governing authority of the community school or the science, technology, engineering, and mathematics school and are entitled to attend school in a city, local, or exempted village school district whose territory is part of the territory of the joint vocational district. Beginning in fiscal year 2007, in the case of the report submitted for the first week in February, or the alternative week if specified by the superintendent of public instruction, the superintendent of the joint vocational school district may include the number of students reported under division (D)(1) of this section for the first full week of the preceding October but who since that week have received high school diplomas.

The following categories of students shall not be included in the determination made under division (D)(1) of this section:

- (a) Students enrolled in adult education classes;
- (b) Adjacent or other district joint vocational students enrolled in the district under an open enrollment policy pursuant to section 3313.98 of the Revised Code;
- (c) Students receiving services in the district pursuant to a compact, cooperative education agreement, or a contract, but who are entitled to attend school in a city, local, or exempted village school district whose territory is not part of the territory of the joint vocational district;
- (d) Students for whom tuition is payable pursuant to sections 3317.081 and 3323.141 of the Revised Code.

(2) To enable the department of education to obtain the data needed to complete the calculation of payments pursuant to this chapter, in addition to the formula ADM, each superintendent shall report separately the average daily membership included in the report under division (D)(1) of this section for each of the following categories of students for the same week for which formula ADM is certified:

- (a) Students enrolled in each grade included in the joint vocational

district schools;

(b) ~~Handicapped children~~ Children with disabilities receiving special education services for the category one ~~handicap disability~~ described in division (A) of section 3317.013 of the Revised Code;

(c) ~~Handicapped children~~ Children with disabilities receiving special education services for the category two ~~handicaps disabilities~~ described in division (B) of section 3317.013 of the Revised Code;

(d) ~~Handicapped children~~ Children with disabilities receiving special education services for category three ~~handicaps disabilities~~ described in division (C) of section 3317.013 of the Revised Code;

(e) ~~Handicapped children~~ Children with disabilities receiving special education services for category four ~~handicaps disabilities~~ described in division (D) of section 3317.013 of the Revised Code;

(f) ~~Handicapped children~~ Children with disabilities receiving special education services for the category five ~~handicap disabilities~~ described in division (E) of section 3317.013 of the Revised Code;

(g) ~~Handicapped children~~ Children with disabilities receiving special education services for category six ~~handicaps disabilities~~ described in division (F) of section 3317.013 of the Revised Code;

(h) Students receiving category one vocational education services, described in division (A) of section 3317.014 of the Revised Code;

(i) Students receiving category two vocational education services, described in division (B) of section 3317.014 of the Revised Code.

The superintendent of each joint vocational school district shall also indicate the city, local, or exempted village school district in which each joint vocational district pupil is entitled to attend school pursuant to section 3313.64 or 3313.65 of the Revised Code.

(E) In each school of each city, local, exempted village, joint vocational, and cooperative education school district there shall be maintained a record of school membership, which record shall accurately show, for each day the school is in session, the actual membership enrolled in regular day classes. For the purpose of determining average daily membership, the membership figure of any school shall not include any pupils except those pupils described by division (A) of this section. The record of membership for each school shall be maintained in such manner that no pupil shall be counted as in membership prior to the actual date of entry in the school and also in such manner that where for any cause a pupil permanently withdraws from the school that pupil shall not be counted as in membership from and after the date of such withdrawal. There shall not be included in the membership of any school any of the following:

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

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

(3) Any pupil who was enrolled in the schools of the district during the previous school year when tests were administered under section 3301.0711 of the Revised Code but did not take one or more of the tests required by that section and was not excused pursuant to division (C)(1) or (3) of that section;

(4) Any pupil who has attained the age of twenty-two years, except for veterans of the armed services whose attendance was interrupted before completing the recognized twelve-year course of the public schools by reason of induction or enlistment in the armed forces and who apply for reenrollment in the public school system of their residence not later than four years after termination of war or their honorable discharge.

If, however, any veteran described by division (E)(4) of this section elects to enroll in special courses organized for veterans for whom tuition is paid under the provisions of federal laws, or otherwise, that veteran shall not be included in average daily membership.

Notwithstanding division (E)(3) of this section, the membership of any school may include a pupil who did not take a test required by section 3301.0711 of the Revised Code if the superintendent of public instruction grants a waiver from the requirement to take the test to the specific pupil and a parent is not paying tuition for the pupil pursuant to section 3313.6410 of the Revised Code. The superintendent may grant such a waiver only for good cause in accordance with rules adopted by the state board of education.

Except as provided in divisions (B)(2) and (F) of this section, the average daily membership figure of any local, city, exempted village, or joint vocational school district shall be determined by dividing the figure representing the sum of the number of pupils enrolled during each day the school of attendance is actually open for instruction during the week for which the formula ADM is being certified by the total number of days the school was actually open for instruction during that week. For purposes of state funding, "enrolled" persons are only those pupils who are attending school, those who have attended school during the current school year and are absent for authorized reasons, and those ~~handicapped~~ handicapped children with disabilities currently receiving home instruction.

The average daily membership figure of any cooperative education school district shall be determined in accordance with rules adopted by the state board of education.

(F)(1) If the formula ADM for the first full school week in February is

at least three per cent greater than that certified for the first full school week in the preceding October, the superintendent of schools of any city, exempted village, or joint vocational school district or educational service center shall certify such increase to the superintendent of public instruction. Such certification shall be submitted no later than the fifteenth day of February. For the balance of the fiscal year, beginning with the February payments, the superintendent of public instruction shall use the increased formula ADM in calculating or recalculating the amounts to be allocated in accordance with section 3317.022 or 3317.16 of the Revised Code. In no event shall the superintendent use an increased membership certified to the superintendent after the fifteenth day of February. Division (F)(1) of this section does not apply after fiscal year 2006.

(2) If on the first school day of April the total number of classes or units for ~~handicapped~~ preschool children with disabilities that are eligible for approval under division (B) of section 3317.05 of the Revised Code exceeds the number of units that have been approved for the year under that division, the superintendent of schools of any city, exempted village, or cooperative education school district or educational service center shall make the certifications required by this section for that day. If the department determines additional units can be approved for the fiscal year within any limitations set forth in the acts appropriating moneys for the funding of such units, the department shall approve additional units for the fiscal year on the basis of such average daily membership. For each unit so approved, the department shall pay an amount computed in the manner prescribed in section 3317.052 or 3317.19 and section 3317.053 of the Revised Code.

(3) If a student attending a community school under Chapter 3314. or a science, technology, engineering, and mathematics school established under Chapter 3326. of the Revised Code is not included in the formula ADM certified for the school district in which the student is entitled to attend school under section 3313.64 or 3313.65 of the Revised Code, the department of education shall adjust the formula ADM of that school district to include the ~~community school~~ student in accordance with division (C)(2) of this section, and shall recalculate the school district's payments under this chapter for the entire fiscal year on the basis of that adjusted formula ADM. This requirement applies regardless of whether the student was enrolled, as defined in division (E) of this section, in the community school or the science, technology, engineering, and mathematics school during the week for which the formula ADM is being certified.

(4) If a student awarded an educational choice scholarship is not included in the formula ADM of the school district from which the

department deducts funds for the scholarship under section 3310.08 of the Revised Code, the department shall adjust the formula ADM of that school district to include the student to the extent necessary to account for the deduction, and shall recalculate the school district's payments under this chapter for the entire fiscal year on the basis of that adjusted formula ADM. This requirement applies regardless of whether the student was enrolled, as defined in division (E) of this section, in the chartered nonpublic school, the school district, or a community school during the week for which the formula ADM is being certified.

(G)(1)(a) The superintendent of an institution operating a special education program pursuant to section 3323.091 of the Revised Code shall, for the programs under such superintendent's supervision, certify to the state board of education, in the manner prescribed by the superintendent of public instruction, both of the following:

(i) The average daily membership of all ~~handicapped~~ children with disabilities other than ~~handicapped~~ preschool children with disabilities receiving services at the institution for each category of ~~handicap~~ disability described in divisions (A) to (F) of section 3317.013 of the Revised Code;

(ii) The average daily membership of all ~~handicapped~~ preschool children with disabilities in classes or programs approved annually by the department of education for unit funding under section 3317.05 of the Revised Code.

(b) The superintendent of an institution with vocational education units approved under division (A) of section 3317.05 of the Revised Code shall, for the units under the superintendent's supervision, certify to the state board of education the average daily membership in those units, in the manner prescribed by the superintendent of public instruction.

(2) The superintendent of each county MR/DD board that maintains special education classes under section 3317.20 of the Revised Code or units approved pursuant to section 3317.05 of the Revised Code shall do both of the following:

(a) Certify to the state board, in the manner prescribed by the board, the average daily membership in classes under section 3317.20 of the Revised Code for each school district that has placed children in the classes;

(b) Certify to the state board, in the manner prescribed by the board, the number of all ~~handicapped~~ preschool children with disabilities enrolled as of the first day of December in classes eligible for approval under division (B) of section 3317.05 of the Revised Code, and the number of those classes.

(3)(a) If on the first school day of April the number of classes or units maintained for ~~handicapped~~ preschool children with disabilities by the

county MR/DD board that are eligible for approval under division (B) of section 3317.05 of the Revised Code is greater than the number of units approved for the year under that division, the superintendent shall make the certification required by this section for that day.

(b) If the department determines that additional classes or units can be approved for the fiscal year within any limitations set forth in the acts appropriating moneys for the funding of the classes and units described in division (G)(3)(a) of this section, the department shall approve and fund additional units for the fiscal year on the basis of such average daily membership. For each unit so approved, the department shall pay an amount computed in the manner prescribed in sections 3317.052 and 3317.053 of the Revised Code.

(H) Except as provided in division (I) of this section, when any city, local, or exempted village school district provides instruction for a nonresident pupil whose attendance is unauthorized attendance as defined in section 3327.06 of the Revised Code, that pupil's membership shall not be included in that district's membership figure used in the calculation of that district's formula ADM or included in the determination of any unit approved for the district under section 3317.05 of the Revised Code. The reporting official shall report separately the average daily membership of all pupils whose attendance in the district is unauthorized attendance, and the membership of each such pupil shall be credited to the school district in which the pupil is entitled to attend school under division (B) of section 3313.64 or section 3313.65 of the Revised Code as determined by the department of education.

(I)(1) A city, local, exempted village, or joint vocational school district admitting a scholarship student of a pilot project district pursuant to division (C) of section 3313.976 of the Revised Code may count such student in its average daily membership.

(2) In any year for which funds are appropriated for pilot project scholarship programs, a school district implementing a state-sponsored pilot project scholarship program that year pursuant to sections 3313.974 to 3313.979 of the Revised Code may count in average daily membership:

(a) All children residing in the district and utilizing a scholarship to attend kindergarten in any alternative school, as defined in section 3313.974 of the Revised Code;

(b) All children who were enrolled in the district in the preceding year who are utilizing a scholarship to attend any such alternative school.

(J) The superintendent of each cooperative education school district shall certify to the superintendent of public instruction, in a manner

prescribed by the state board of education, the applicable average daily memberships for all students in the cooperative education district, also indicating the city, local, or exempted village district where each pupil is entitled to attend school under section 3313.64 or 3313.65 of the Revised Code.

(K) If the superintendent of public instruction determines that a component of the formula ADM certified or reported by a district superintendent, or other reporting entity, is not correct, the superintendent of public instruction may order that the formula ADM used for the purposes of payments under any section of Title XXXIII of the Revised Code be adjusted in the amount of the error.

Sec. 3317.031. A membership record shall be kept by grade level in each city, local, exempted village, joint vocational, and cooperative education school district and such a record shall be kept by grade level in each educational service center that provides academic instruction to pupils, classes for ~~handicapped~~ pupils with disabilities, or any other direct instructional services to pupils. Such membership record shall show the following information for each pupil enrolled: Name, date of birth, name of parent, date entered school, date withdrawn from school, days present, days absent, and the number of days school was open for instruction while the pupil was enrolled. At the end of the school year this membership record shall show the total days present, the total days absent, and the total days due for all pupils in each grade. Such membership record shall show the pupils that are transported to and from school and it shall also show the pupils that are transported living within one mile of the school attended. This membership record shall also show any other information prescribed by the state board of education.

This membership record shall be kept intact for at least five years and shall be made available to the state board of education or its representative in making an audit of the average daily membership or the transportation of the district or educational service center. The membership records of local school districts shall be filed at the close of each school year in the office of the educational service center superintendent.

The state board of education may withhold any money due any school district or educational service center under sections 3317.022 to 3317.0211, 3317.11, 3317.16, 3317.17, or 3317.19 of the Revised Code until it has satisfactory evidence that the board of education or educational service center governing board has fully complied with all of the provisions of this section.

Nothing in this section shall require any person to release, or to permit

Am. Sub. H. B. No. 119

Jon C. Husted

Speaker _____ of the House of Representatives.

Bill Harris

President _____ of the Senate.

Passed June 27, 2007

Approved _____, 20____

Governor.

*The boxed and initialed text
contained in Am. Sub. H.B. 119
is disapproved.*

All remaining text is approved.

*Ted Strickland
June 30, 2007*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Mark C. Flanders

Interim Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 30th day of June, A. D. 20 07.

James B. ...

Secretary of State.

File No. 15

Effective Date Some sections effective immediately, on 6/30/07 Referendum period, if applicable expires 9/28/07. Other sections effective as provided in the Act.

AN ACT

To amend sections 7.12, 9.06, 9.24, 9.314, 101.34, 101.72, 102.02, 105.41, 107.21, 107.40, 109.57, 109.572, 109.73, 109.731, 109.742, 109.744, 109.751, 109.761, 109.77, 109.802, 109.803, 117.13, 118.05, 120.08, 121.04, 121.07, 121.08, 121.083, 121.084, 121.31, 121.37, 121.40, 121.401, 121.402, 122.011, 122.05, 122.051, 122.075, 122.151, 122.17, 122.171, 122.40, 122.603, 122.71, 122.751, 122.76, 122.89, 123.01, 124.03, 124.04, 124.07, 124.11, 124.134, 124.14, 124.152, 124.181, 124.183, 124.22, 124.23, 124.27, 124.321, 124.324, 124.325, 124.34, 124.381, 124.382, 124.385, 124.386, 124.392, 124.81, 125.11, 125.18, 125.831, 126.05, 126.21, 126.35, 127.16, 131.23, 131.33, 133.01, 133.02, 133.06, 133.18, 133.20, 133.21, 133.34, 135.03, 135.06, 135.08, 135.32, 141.04, 145.012, 145.298, 148.02, 148.04, 149.43, 149.45, 150.01, 150.02, 150.03, 150.04, 150.05, 150.07, 152.09, 152.10, 152.12, 152.15, 152.33, 156.01, 156.02, 156.03, 156.04, 166.02, 166.07, 166.08, 166.11, 166.25, 169.08, 173.08, 173.35, 173.392, 173.40, 173.401, 173.42, 173.43, 173.50, 173.71, 173.76, 173.99, 174.02, 174.03, 174.06, 175.01, 176.05, 303.213, 307.626, 307.629, 307.79, 311.17, 311.42, 319.28, 319.301, 319.302, 319.54, 321.24, 321.261, 323.01, 323.121, 323.156, 323.73, 323.74, 323.77, 323.78, 329.03, 329.04, 329.042, 329.051, 329.06, 340.033, 343.01, 351.01, 351.021, 504.21, 505.82, 711.001, 711.05, 711.10, 711.131, 718.04, 721.15, 901.20, 901.32, 901.43, 903.082, 903.11, 903.25, 908.32, 905.321

The above boxed and initialed text was disapproved.

Date: 7-17-09

Ted Strickland
Ted Strickland, Governor

division (A)(1)(c) of section 3319.60 of the Revised Code, as amended by this act, not later than sixty days after the effective date of this section. The term of office of that member shall expire July 1, 2012. Thereafter, the term of the school district treasurer or business manager appointed to the Educator Standards Board shall be for two years.

(C) The State Board of Education shall appoint a parent to the Educator Standards Board under division (A)(1)(e) of section 3319.60 of the Revised Code, as amended by this act, not later than sixty days after the effective date of this section. The term of office of that member shall expire July 1, 2011. Thereafter, the term of the parent representative appointed to the Educator Standards Board shall be for two years.

(D) The higher education representatives appointed by the State Board of Education to the Educator Standards Board prior to the effective date of this section under former division (A)(5) of section 3319.60 of the Revised Code shall serve for the remainder of their terms. The Chancellor of the Ohio Board of Regents shall appoint higher education representatives to the Educator Standards Board under division (A)(2) of section 3319.60 of the Revised Code, as amended by this act, as the terms of the higher education representatives appointed under former division (A)(5) of that section expire, each for a term of two years. The Chancellor also shall fill any vacancies that occur during the term of a higher education representative appointed under former division (A)(5) of that section.

SECTION 265.60.70. RESTRICTION OF LIABILITY FOR CERTAIN REIMBURSEMENTS

(A) Except as expressly required under a court judgment not subject to further appeals, or a settlement agreement with a school district executed on or before June 1, 2009, in the case of a school district for which the formula ADM for fiscal year 2005, as reported for that fiscal year under division (A) of section 3317.03 of the Revised Code, was reduced based on enrollment reports for community schools, made under section 3314.08 of the Revised Code, regarding students entitled to attend school in the district, which reduction of formula ADM resulted in a reduction of foundation funding or transitional aid funding for fiscal year 2005, 2006, or 2007, no school district, except a district named in the court's judgment or the settlement agreement, shall have a legal claim for reimbursement of the amount of such reduction in foundation funding or transitional aid funding, and the state shall not have liability for reimbursement of the amount of such reduction in foundation funding or transitional aid funding.

(B) As used in this section:

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

(2) "Entitled to attend school" means entitled to attend school in a school district under section 3313.64 or 3313.65 of the Revised Code.

(3) "Foundation funding" means payments calculated for the respective fiscal year under Chapter 3317. of the Revised Code.

(4) "Transitional aid funding" means payments calculated for the respective fiscal year under Section 41.37 of Am. Sub. H.B. 95 of the 125th General Assembly, as subsequently amended; Section 206.09.39 of Am. Sub. H.B. 66 of the 126th General Assembly, as subsequently amended; and Section 269.30.80 of Am. Sub. H.B. 119 of the 127th General Assembly.

SECTION 265.60.80. COMMITTEE TO UPDATE STANDARDS AND CURRICULA

Not later than September 15, 2009, the State Board of Education shall convene a committee of national experts, state experts, and local practitioners to provide advice and guidance in the design of the updated standards and curricula required by section 3301.079 of the Revised Code, as amended by this act.

SECTION 265.60.90. All duties, powers, obligations, and functions performed by, all rights exercised by, and the remaining unexpended, unencumbered balance of any money appropriated or reappropriated to the Department of Administrative Services with regard to the School Employees Health Care Board under section 9.901 of the Revised Code, whether obligated or unobligated, are transferred to the Department of Education on July 1, 2009. The Department of Education thereupon succeeds to, and shall assume, all duties, powers, obligations, and functions performed by, all rights exercised by, and the remaining unexpended, unencumbered balance of any money appropriated or reappropriated to the Department of Administrative Services with regard to the School Employees Health Care Board under section 9.901 of the Revised Code.

JS

Any aspect of the board's operations commenced but not completed by the Department of Administrative Services on July 1, 2009, shall be completed by the Superintendent of Public Instruction or staff of the Department of Education in the same manner, and with the same effect, as if completed by the Department of Administrative Services or the staff of the Department of Administrative Services. Any validation, cure, right, privilege, remedy, obligation, or liability related to the board's operations is

The above boxed and initialed text was disapproved.

Date: 7-17-09

Ted Strickland APRX 119
Ted Strickland Governor

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Mark C. Flanders

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
17th day of July, A. D. 2009.

Jim B...

Secretary of State.

File No. 9

Effective Date 7/17/09; Some sections
effective immediately on 7/17/09
as the sections are or relate
to an appropriation for current
expenses. Other sections subject
to the referendum period are
effective on 10/16/09.

(129th General Assembly)
(Amended Substitute House Bill Number 153)

AN ACT

To amend sections 7.10, 7.11, 7.12, 9.06, 9.231, 9.24, 9.33, 9.331, 9.332, 9.333, 9.82, 9.823, 9.833, 9.90, 9.901, 101.532, 101.82, 102.02, 105.41, 107.09, 109.36, 109.43, 109.57, 109.572, 109.64, 109.71, 109.801, 111.12, 111.16, 111.18, 117.101, 117.13, 118.023, 118.04, 118.05, 118.06, 118.12, 118.17, 118.99, 119.032, 120.40, 121.03, 121.04, 121.22, 121.37, 121.40, 121.401, 121.402, 121.403, 121.404, 122.121, 122.171, 122.76, 122.861, 123.01, 123.011, 123.10, 124.09, 124.23, 124.231, 124.24, 124.25, 124.26, 124.27, 124.31, 124.34, 124.393, 124.85, 125.021, 125.15, 125.18, 125.28, 125.89, 126.11, 126.12, 126.21, 126.24, 126.45, 126.46, 126.50, 127.14, 127.16, 131.02, 131.23, 131.44, 131.51, 133.01, 133.06, 133.09, 133.18, 133.20, 133.55, 135.05, 135.61, 135.65, 135.66, 145.27, 145.56, 149.01, 149.091, 149.11, 149.311, 149.351, 149.38, 149.39, 149.41, 149.411, 149.412, 149.42, 149.43, 153.01, 153.02, 153.03, 153.07, 153.08, 153.50, 153.51, 153.52, 153.54, 153.56, 153.581, 153.65, 153.66, 153.67, 153.69, 153.70, 153.71, 153.80, 154.02, 154.07, 154.11, 166.02, 173.14, 173.21, 173.26, 173.35, 173.351, 173.36, 173.391, 173.40, 173.401, 173.403, 173.404, 173.42, 173.45, 173.46, 173.47, 173.48, 173.501, 183.30, 183.51, 185.01, 185.03, 185.06, 185.10, 187.01, 187.02, 187.03, 187.09, 301.02, 301.15, 301.28, 305.171, 306.35, 306.43, 306.70, 307.022, 307.041, 307.10, 307.12, 307.676, 307.70, 307.79, 307.791, 307.80, 307.801, 307.802, 307.803, 307.806, 307.81, 307.82, 307.83, 307.84, 307.842,

SCHOOL

(A) As used in this section:

(1) "Big eight school district" has the same meaning as in section 3314.02 of the Revised Code.

(2) "Early college high school" means a high school that provides students with a personalized learning plan based on an accelerated curriculum combining high school and college-level coursework.

(B) Any early college high school that is operated by a big eight school district in partnership with a private university may operate as a new start-up community school under Chapter 3314. of the Revised Code beginning in the 2007-2008 school year, if all of the following conditions are met:

(1) The governing authority and sponsor of the school enter into a contract in accordance with section 3314.03 of the Revised Code and, notwithstanding division (D) of section 3314.02 of the Revised Code, both parties adopt and sign the contract by July 9, 2007.

(2) Notwithstanding division (A) of former section 3314.016 of the Revised Code, the school's governing authority enters into a contract with the private university under which the university will be the school's operator.

(3) The school provides the same educational program the school provided while part of the big eight school district.

SECTION 267.50.50. USE OF VOLUNTEERS

The Department of Education may utilize the services of volunteers to accomplish any of the purposes of the Department. The Superintendent of Public Instruction shall approve for what purposes volunteers may be used and for these purposes may recruit, train, and oversee the services of volunteers. The Superintendent may reimburse volunteers for necessary and appropriate expenses in accordance with state guidelines and may designate volunteers as state employees for the purpose of motor vehicle accident liability insurance under section 9.83 of the Revised Code, for immunity under section 9.86 of the Revised Code, and for indemnification from liability incurred in the performance of their duties under section 9.87 of the Revised Code.

SECTION 267.50.60. RESTRICTION OF LIABILITY FOR CERTAIN REIMBURSEMENTS

(A) Except as expressly required under a court judgment not subject to further appeals, or a settlement agreement with a school district executed on or before June 1, 2009, in the case of a school district for which the formula ADM for fiscal year 2005, as reported for that fiscal year under division (A) of section 3317.03 of the Revised Code, was reduced based on enrollment reports for community schools, made under section 3314.08 of the Revised Code, regarding students entitled to attend school in the district, which reduction of formula ADM resulted in a reduction of foundation funding or transitional aid funding for fiscal year 2005, 2006, or 2007, no school district, except a district named in the court's judgment or the settlement agreement, shall have a legal claim for reimbursement of the amount of such reduction in foundation funding or transitional aid funding, and the state shall not have liability for reimbursement of the amount of such reduction in foundation funding or transitional aid funding.

(B) As used in this section:

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

(2) "Entitled to attend school" means entitled to attend school in a school district under section 3313.64 or 3313.65 of the Revised Code.

(3) "Foundation funding" means payments calculated for the respective fiscal year under Chapter 3317. of the Revised Code.

(4) "Transitional aid funding" means payments calculated for the respective fiscal year under Section 41.37 of Am. Sub. H.B. 95 of the 125th General Assembly, as subsequently amended; Section 206.09.39 of Am. Sub. H.B. 66 of the 126th General Assembly, as subsequently amended; and Section 269.30.80 of Am. Sub. H.B. 119 of the 127th General Assembly.

SECTION 267.50.70. UNAUDITABLE COMMUNITY SCHOOL

(A) If the Auditor of State or a public accountant, pursuant to section 117.41 of the Revised Code, declares a community school established under Chapter 3314. of the Revised Code to be unauditabile, the Auditor of State shall provide written notification of that declaration to the school, the school's sponsor, and the Department of Education. The Auditor of State also shall post the notification on the Auditor of State's web site.

(B) Notwithstanding any provision to the contrary in Chapter 3314. of the Revised Code or any other provision of law, a sponsor of a community school that is notified by the Auditor of State under division (A) of this section that a community school it sponsors is unauditabile shall not enter into contracts with any additional community schools under section 3314.03 of the Revised Code until the Auditor of State or a public accountant has

William D. Bitchell

Speaker _____ of the House of Representatives.

Thomas E. Nickau

President _____ of the Senate.

Passed June 29, 2011

Approved June 30, 2011

John R. Kasich

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 30th day of June, A. D. 2011.



Secretary of State.

File No. 28

Effective Date Some sections eff. 6/30/11
Some sections eff. 9/29/11
Some sections eff. on
specific dates provided in
the bill

AN ACT

To amend sections 9.03, 9.15, 9.231, 9.239, 9.24, 9.833, 9.90, 9.901, 101.39, 101.391, 102.02, 103.144, 103.63, 107.033, 107.12, 109.06, 109.36, 109.57, 109.572, 109.71, 109.746, 109.77, 109.85, 109.86, 109.90, 109.91, 111.02, 111.15, 111.28, 113.02, 113.061, 117.03, 117.10, 117.20, 119.01, 120.06, 121.02, 121.03, 121.22, 121.35, 121.37, 121.372, 122.075, 122.083, 122.17, 122.171, 122.175, 122.28, 122.30, 122.31, 122.32, 122.33, 122.34, 122.35, 122.36, 122.58, 122.657, 122.658, 122.66, 122.67, 122.68, 122.69, 122.70, 122.701, 122.76, 122.861, 123.01, 123.10, 123.11, 123.201, 123.21, 123.27, 124.11, 124.14, 124.18, 124.30, 124.341, 124.381, 124.57, 124.84, 125.05, 125.21, 125.212, 125.28, 125.602, 125.603, 125.832, 125.836, 126.07, 126.14, 126.32, 126.35, 126.45, 126.46, 126.47, 126.48, 127.14, 127.16, 131.51, 133.01, 133.06, 135.22, 135.61, 135.71, 135.80, 135.81, 135.85, 140.01, 140.03, 140.05, 145.01, 145.012, 145.037, 145.038, 145.22, 149.01, 149.12, 149.311, 149.43, 149.431, 149.54, 151.11, 152.09, 153.692, 154.01, 154.17, 154.20, 154.22, 154.23, 154.25, 156.02, 156.03, 156.04, 156.05, 166.02, 166.03, 166.04, 166.08, 166.25, 167.03, 169.02, 169.05, 169.07, 169.08, 171.05, 173.03, 173.14, 173.17, 173.19, 173.20, 173.21, 173.23, 173.25, 173.26, 173.27, 173.28, 173.39, 173.391, 173.392, 173.394, 173.40, 173.401, 173.402, 173.403, 173.404, 173.42, 173.43, 173.431, 173.432, 173.434, 173.45, 173.47, 173.48, 173.50, 173.501, 173.99, 183.16, 183.33, 187.10, 191.01, 191.02, 191.04,

those services, an analysis of the effectiveness of the program, and an opinion as to the program's applicability to other school districts. For an earmarked entity that received state funds from an earmark in the prior fiscal year, no funds shall be provided by the Department of Education to an earmarked entity for a fiscal year until its report for the prior fiscal year has been submitted.

SECTION 263.390. COMMUNITY SCHOOL OPERATING FROM HOME

A community school established under Chapter 3314. of the Revised Code that was open for operation as a community school as of May 1, 2005, may operate from or in any home, as defined in section 3313.64 of the Revised Code, located in the state, regardless of when the community school's operations from or in a particular home began.

SECTION 263.400. USE OF VOLUNTEERS

The Department of Education may utilize the services of volunteers to accomplish any of the purposes of the Department. The Superintendent of Public Instruction shall approve for what purposes volunteers may be used and for these purposes may recruit, train, and oversee the services of volunteers. The Superintendent may reimburse volunteers for necessary and appropriate expenses in accordance with state guidelines and may designate volunteers as state employees for the purpose of motor vehicle accident liability insurance under section 9.83 of the Revised Code, for immunity under section 9.86 of the Revised Code, and for indemnification from liability incurred in the performance of their duties under section 9.87 of the Revised Code.

SECTION 263.410. RESTRICTION OF LIABILITY FOR CERTAIN REIMBURSEMENTS

(A) Except as expressly required under a court judgment not subject to further appeals, or a settlement agreement with a school district executed on or before June 1, 2009, in the case of a school district for which the formula ADM for fiscal year 2005, as reported for that fiscal year under division (A) of section 3317.03 of the Revised Code, was reduced based on enrollment reports for community schools, made under section 3314.08 of the Revised Code, regarding students entitled to attend school in the district, which reduction of formula ADM resulted in a reduction of foundation funding or

transitional aid funding for fiscal year 2005, 2006, or 2007, no school district, except a district named in the court's judgment or the settlement agreement, shall have a legal claim for reimbursement of the amount of such reduction in foundation funding or transitional aid funding, and the state shall not have liability for reimbursement of the amount of such reduction in foundation funding or transitional aid funding.

(B) As used in this section:

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

(2) "Entitled to attend school" means entitled to attend school in a school district under section 3313.64 or 3313.65 of the Revised Code.

(3) "Foundation funding" means payments calculated for the respective fiscal year under Chapter 3317. of the Revised Code.

(4) "Transitional aid funding" means payments calculated for the respective fiscal year under Section 41.37 of Am. Sub. H.B. 95 of the 125th General Assembly, as subsequently amended; Section 206.09.39 of Am. Sub. H.B. 66 of the 126th General Assembly, as subsequently amended; and Section 269.30.80 of Am. Sub. H.B. 119 of the 127th General Assembly.

SECTION 263.420. UNAUDITABLE COMMUNITY SCHOOL

(A) If the Auditor of State or a public accountant, pursuant to section 117.41 of the Revised Code, declares a community school established under Chapter 3314. of the Revised Code to be unauditabile, the Auditor of State shall provide written notification of that declaration to the school, the school's sponsor, and the Department of Education. The Auditor of State also shall post the notification on the Auditor of State's web site.

(B) Notwithstanding any provision to the contrary in Chapter 3314. of the Revised Code or any other provision of law, a sponsor of a community school that is notified by the Auditor of State under division (A) of this section that a community school it sponsors is unauditabile shall not enter into contracts with any additional community schools under section 3314.03 of the Revised Code until the Auditor of State or a public accountant has completed a financial audit of that school.

(C) Not later than forty-five days after receiving notification by the Auditor of State under division (A) of this section that a community school is unauditabile, the sponsor of the school shall provide a written response to the Auditor of State. The response shall include the following:

(1) An overview of the process the sponsor will use to review and understand the circumstances that led to the community school becoming unauditabile;

William D. Batchelder

Speaker _____ of the House of Representatives.

John J. Felt

President _____ of the Senate.

Passed June 27, 2013

Approved JUNE 30, 2013

John R. Kasich

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code. *

Marks C. Flanders

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 30th day of June, A. D. 2013.

Joe Husted

Secretary of State.

File No. 25

Effective Date Some sections take immediate effect on June 30, 2013; some provisions take effect on September 29, 2013; and, some provisions take effect on specific dates provided in the bill.

*This certification has required my designation of the following in the left-hand margin as proper code section numbers:

5119.091, 5119.311, 5119.371, 5119.391

Marks C. Flanders

Director, Legislative Service Commission

AN ACT

To amend sections 1.05, 9.312, 9.333, 9.83, 9.833, 9.90, 9.901, 102.02, 102.022, 103.412, 105.41, 109.57, 109.572, 109.77, 109.79, 113.06, 113.07, 118.023, 118.04, 119.04, 119.12, 121.03, 121.04, 121.22, 121.36, 121.372, 121.40, 122.17, 122.171, 122.174, 122.175, 122.177, 122.64, 122.68, 122.85, 122.87, 122.942, 122.95, 122.951, 123.10, 123.28, 123.281, 124.11, 124.14, 124.15, 124.152, 124.181, 124.34, 124.382, 124.392, 125.02, 125.04, 125.041, 125.05, 125.07, 125.08, 125.081, 125.082, 125.10, 125.11, 125.112, 125.13, 125.27, 125.28, 125.31, 125.36, 125.38, 125.39, 125.42, 125.43, 125.45, 125.49, 125.51, 125.58, 125.601, 125.607, 125.609, 125.76, 125.901, 126.32, 128.021, 128.40, 128.54, 128.55, 128.57, 131.09, 131.15, 131.34, 131.35, 131.43, 131.44, 133.01, 133.04, 133.05, 133.07, 133.34, 135.01, 135.04, 135.14, 135.144, 135.145, 135.18, 135.181, 135.35, 135.353, 135.354, 135.37, 135.74, 140.01, 141.04, 145.114, 145.116, 145.56, 145.571, 149.04, 149.43, 153.08, 153.70, 156.01, 156.02, 156.04, 167.06, 173.47, 173.48, 173.522, 173.523, 173.543, 173.544, 173.545, 174.02, 187.03, 191.04, 191.06, 305.31, 306.35, 319.63, 321.24, 323.13, 325.03, 325.04, 325.06, 325.08, 325.09, 325.10, 325.11, 325.14, 325.15, 339.06, 340.03, 340.034, 340.04, 340.05, 340.07, 340.12, 340.15, 341.34, 343.01, 349.01, 349.03, 349.04, 349.06, 349.07, 349.14, 355.02, 355.03, 355.04, 505.101, 505.24, 505.701, 505.86, 507.09, 507.11, 517.07, 517.15, 717.01, 718.01, 718.04, 718.05, 718.07, 718.37, 731.59,

under section 9.86 of the Revised Code, and for indemnification from liability incurred in the performance of their duties under section 9.87 of the Revised Code.

SECTION 263.450. RESTRICTION OF LIABILITY FOR CERTAIN REIMBURSEMENTS

(A) Except as expressly required under a court judgment not subject to further appeals, or a settlement agreement with a school district executed on or before June 1, 2009, in the case of a school district for which the formula ADM for fiscal year 2005, as reported for that fiscal year under division (A) of section 3317.03 of the Revised Code, was reduced based on enrollment reports for community schools, made under section 3314.08 of the Revised Code, regarding students entitled to attend school in the district, which reduction of formula ADM resulted in a reduction of foundation funding or transitional aid funding for fiscal year 2005, 2006, or 2007, no school district, except a district named in the court's judgment or the settlement agreement, shall have a legal claim for reimbursement of the amount of such reduction in foundation funding or transitional aid funding, and the state shall not have liability for reimbursement of the amount of such reduction in foundation funding or transitional aid funding.

(B) As used in this section:

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

(2) "Entitled to attend school" means entitled to attend school in a school district under section 3313.64 or 3313.65 of the Revised Code.

(3) "Foundation funding" means payments calculated for the respective fiscal year under Chapter 3317. of the Revised Code.

(4) "Transitional aid funding" means payments calculated for the respective fiscal year under Section 41.37 of Am. Sub. H.B. 95 of the 125th General Assembly, as subsequently amended; Section 206.09.39 of Am. Sub. H.B. 66 of the 126th General Assembly, as subsequently amended; and Section 269.30.80 of Am. Sub. H.B. 119 of the 127th General Assembly.

SECTION 263.470. FLEXIBLE FUNDING FOR FAMILIES AND CHILDREN

In collaboration with the County Family and Children First Council, a city, local, or exempted village school district, community school, STEM school, joint vocational school district, educational service center, or county board of developmental disabilities that receives allocations from the