# Procedures of the State Board of Education

# State of Ohio State Board of Education

Adopted by the State Board of Education in December 2006

### **December 2006 State Board of Education**

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In December 2006, the State Board of Education approved a revision to the procedures manual after review and recommendations by the Policies and Procedures Manual Subcommittee. Future changes to this document will be considered as recommended after the consideration and approval of the Board.

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### INTRODUCTION

### Purpose of the Procedures Manual of the State Board of Education

This manual provides information on the operational procedures of the State Board of Education in Ohio. It is designed to provide members of the Board with easy access to the responsibilities and the processes of the State Board of Education.

After review and recommendation by the Policies and Procedures Manual Subcommittee, the State Board of Education approved revisions to this document in December 2006.

# **Creation of the State Board of Education: Constitutional and Statutory Authority**

The State Board of Education was established through an amendment to the Ohio Constitution in November 1953. It is given authority to provide general supervision of the system of public education in Ohio. The first meeting of the State Board was held in January 1956.

## Constitution of the State of Ohio Article VI Section 4

There shall be a state board of education which shall be selected in such manner and for such terms as shall be provided by law. There shall be a superintendent of public instruction, who shall be appointed by the state board of education. The respective powers and duties of the board and of the superintendent shall be prescribed by law.

### Ohio Revised Code

Appendix A includes the following sections of the Ohio Revised Code (ORC) that govern the State Board of Education:

- State Board of Education Created: ORC Section 3301.01
- Term of Office for State Board Members: ORC Section 3301.02
- Qualifications, oath, salary, expenses of members: ORC Section 3301.03
- Meetings: ORC Section 3301.04
- Quorum, public meetings, official records of the Board: ORC Section 3301.05
- Vacancies: ORC Section 3301.06
- Powers of State Board : ORC Section 3301.07
- Superintendent shall be secretary of Board: ORC Section 3301.09

### ROLES AND RESPONSIBILITIES OF THE BOARD

### **Governing Style**

The Board will focus on its mission and approach its task in a professional manner that emphasizes strategic leadership. It will focus on developing educational policy, making a clear distinction between its role and that of the Superintendent.

Accordingly, the Board will:

- 1. Set direction for the Ohio Department of Education (ODE) by focusing on the establishment of education policies and recommendations.
- 2. Be accountable to the public for competent, conscientious and effective accomplishment of its obligations as a Board.
- 3. Evaluate its process and performance to ensure continuity of Board improvements and to be accountable for its performance.

### **Statutory Authority and Responsibilities**

The State Board is provided the authority for general supervision of the system of public education in the state. In addition, the Board has powers under ORC Section 3301.07 which is in Appendix A. The Authority and Responsibilities of the State Board of Education, Ohio Department of Education and Superintendent of Public Instruction are in Appendix B.

A complete list of the State Board functions is provided in Appendix B. Following is an abbreviated list of significant functions:

- Personnel matters including the appointment of the Superintendent of Public Instruction
- Policy development for public education in the state of Ohio
- Information to the public on state education policy
- Legislative and budgetary recommendations to the Governor and Ohio General Assembly (See also page 7)
- Rule-making authority for educator misconduct decisions
- Quasi-judicial functions (See also Appendix D)
- Consolidation/De-Consolidation of school districts
- School district territory transfers (See also Appendix H)
- Approval of Community School sponsors (See also Appendix G)
- Payment in lieu of transportation (See also Appendix F)

### **Board Approved Priorities**

Annually, the State Board of Education will identify board approved priorities that will guide the development of policy to ensure high educational expectations for all Ohio students. This includes strategies for the alignment of a seamless pre-kindergarten through post-secondary system.

### Measurement of Results and Board Evaluation

The measurement of the results of the Board will be determined by the progress made on the Board Approved Priorities identified annually. For each priority, the Board will receive regular reports and will annually measure progress and outcomes.

The Board will evaluate itself at least annually in a manner determined by the Board leadership.

(The current Board Approved Priorities are on the Ohio Department of Education website: <a href="https://www.ode.state.oh.us">www.ode.state.oh.us</a>; State Board of Education home page).

# **Board Educational Policy, Legislative, and Budgetary Recommendations**

Accurate, appropriate and timely data on the status, problems and needs of Ohio education will be provided to the citizenry, the Governor and General Assembly so that informed decisions regarding education can be made. Such information will be contained in the Budget and Policy Recommendations to the Governor and General Assembly, together with other publications deemed appropriate.

### Legislative Recommendations

The Board works with ODE staff to identify legislative recommendations on an on-going basis. After discussion and approval by the committees of the Board, the legislative recommendations are presented to the full Board. After full Board discussion, legislative recommendations are approved through a motion by the Board. Staff from the Office of Legislative Services coordinates the tracking of the legislative recommendations.

### Budget Recommendations

The budget recommendation timeline is developed by a subcommittee of the Board. The budget recommendations are considered by the full Board, and the discussion is guided by the chair of the budget subcommittee and the Board president. The budget recommendations are approved through a resolution by the Board. These are provided to the Governor for consideration as part of the Executive budget that is then submitted to the General Assembly.

### ROLES AND RESPONSIBILITIES OF BOARD MEMBERS

### **Role of Board Members**

- Statements made by members of the State Board of Education should represent the opinions of the Board as a whole and not the opinions of individual members.
   Board members should make it clear when they are expressing their personal viewpoints to the media, legislators, and constituents.
- Board members should be prepared to participate fully in Board meeting discussions and voting decisions.
- Board members should be respectful of the opinions of other Board members and should conduct themselves in a professional manner to other Board members, Department staff, legislators, individuals who address the Board, the media, and constituents.
- Board members will participate in formal training conducted by the Ohio Ethics Commission every two years. Board members are subject to the Ohio Ethics Commission regulations (Appendix I).
- Individual Board member requests for work products from the Department should go through Board leadership, committee chairs or through a committee motion. However, requests for information that is readily available are made directly to the Office of Board Relations in order to track and assure completion of requests. Answers to individual inquiries from constituents are also coordinated and tracked by the Office of Board Relations.

### **Board Member Conduct**

Board members shall:

- Represent the State Board with dignity and integrity
- Be at meetings on time
- Be prepared for meetings
- Help focus meetings in important matters, remembering that the student is always the most important matter
- Value the diverse opinions of others and resolve conflict amicably with civility and responsibility; listen closely to others, being careful about interrupting or dominating discussions
- Have the courage to be understood
- Avoid surprises-communicate and collaborate with constituents, Board members, staff, the Governor, the Legislature, and the press frequently about Board ideas and assignments
- Represent the needs of all students in the state as well as local interests without partisanship
- Seek to understand the feelings and opinions of citizens
- Pursue accountability by appropriate evaluation and measurement
- Achieve unity

(Adapted from the Utah State Board of Education Code of Conduct)

### **Board Member Orientation**

The State Board of Education is responsible for the orientation and development of new members of the State Board.

An ad hoc committee of the State Board, appointed by the president of the Board, shall be responsible for planning the orientation and development of new members, as well as all other members. The orientation shall include procedures, policies, and legal and ethical information. The Superintendent of Public Instruction shall be a member ex-officio of this committee.

### **Board Member Development**

Development will be enhanced through participation in educational leadership organizations. The State Board of Education may join the National Association of State Boards of Education (NASBE).

Appointments of Board members to committees of NASBE and other state or regional educational leadership organizations/activities shall be approved by the Board.

### **Board Member Compensation and Expenses**

**Payment:** Members of the State Board shall be paid the amount provided by law for each day, or part thereof, in actual attendance at any meeting of the Board and at official board committee meetings.

Each Board member is authorized and encouraged to spend twenty-four (24) full days, at a maximum of one hundred ninety-two (192) hours over a period of two fiscal years in school districts. Visiting school districts outside of a Board member's district can be used for four of these days. The president and vice president of the Board are each authorized to spend twenty-four (24) additional days carrying out their duties as Board officers.

Board members shall be compensated under this policy for the time spent as members of state education commissions, which are separate entities from the State Board of Education and its ad hoc committees. The compensation for time spent on such commissions shall not count towards, or be subject to, the day and hour limits of this policy.

**Expenses:** Members shall be entitled to reimbursement for actual and necessary expenses incurred while engaged in the performance of official duties or in the conduct of authorized Board business and while en route to and from their homes for such purposes (Appendix A: ORC Section 3301.03).

Members shall be reimbursed for all actual and necessary expenses incurred. In the event, however, that a personal automobile is used for travel, compensation shall be at

the current state rate per mile from the member's residence to the place of meeting or other business, and return. Parking fees shall not be included within such mileage allowances, but shall be included as actual expenses.

Members shall submit expense statements to the secretary's designee within a month after the expenses are incurred. Travel expenses and per diem requests shall be specifically identified on forms provided by the Department of Education.

The president shall determine the appropriate action to take in reference to any uncertainty regarding any expense statement submitted by a member of the State Board.

All out-of-state travel expense forms shall be approved by the president prior to the incurring of said expenses.

Travel forms and instructions for their completion are on the Ohio Department of Education website <a href="www.ode.state.oh.us">www.ode.state.oh.us</a>. Go to the ODE intranet; then to Fiscal; then to policies/procedures and forms.

### THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

### **Employment of the Superintendent of Public Instruction**

Section 4, Article VI of the Ohio Constitution and Section 3301.08 of the ORC require the State Board of Education to appoint the Superintendent of Public Instruction, who shall serve at the pleasure of the Board.

### 1. Employment

Employment will be based on the Board's judgment that a candidate's knowledge, skills and character offer reasonable assurance of excellent performance.

The Board will establish the recruitment mechanics and methods of screening for desired characteristics sufficient to attract a reasonable pool of candidates. The Board may recommend that a subcommittee assist in the recruitment process and screening of candidates. Selection of the Superintendent from the final candidates will be by the Board.

### 2. Termination

Per Section 3301.08 of the ORC, the Superintendent of Public Instruction serves at the pleasure of the State Board of Education. The Superintendent may be terminated at any time by action of the Board taken at a duly called meeting of the Board.

### 3. Resignation

The Superintendent of Public Instruction may resign by providing prior written notice to the Board within a reasonable period of time in advance of the effective date of the resignation.

# Delegation of Responsibilities to the Superintendent of Public Instruction

The work of the Board is generally confined to establishing major education policies. The implementation of these policies and subsidiary policy development are the responsibility of the Superintendent of Public Instruction. All Board authority delegated to ODE staff is delegated through the Superintendent, so that all authority and accountability of ODE staff can be phrased insofar as the Board is concerned as authority and accountability of the Superintendent.

- 1. The Superintendent is authorized to establish all further regulations, make all decisions, take all actions and develop all activities that are consistent with the Board's policies. The Board may, by extending its policies, modify areas of the Superintendent's authority, but will respect the Superintendent's choices so long as the delegation continues. This does not prevent the Board from obtaining information about activities in the delegated areas.
- 2. No individual Board member, officer or committee has any authority over the Superintendent. Information may be requested by such parties, but if such request, in the Superintendent's judgment, requires a significant amount of Department resources, it may be refused.
- 3. The Board recognizes the State Superintendent's authority to independently appoint committees. Board members may serve on such committees at the request of the State Superintendent; however, such service does not alter the status of the State Superintendent's committee, and does not convert the committee to a committee of the Board
- 4. The Superintendent may not perform, allow or cause to be performed any act that is unlawful, insufficient to meet commonly accepted business and professional ethics or the "prudent person" test, in violation of funding source requirements or regulatory bodies, or contrary to explicit Board constraints on executive authority.
- 5. If the Superintendent deems it necessary to violate a Board policy, the Superintendent shall inform an officer of the Board immediately, and shall inform the full Board in writing within one business day. Informing is simply to guarantee no violation may be intentionally kept from the Board, not to request approval. Officer response does not exempt the Superintendent from subsequent Board judgment of the action, nor does it curtail any executive decision.

Section 3301.111 of the ORC requires the State Board of Education to focus its attention on education policy issues and to delegate administrative responsibilities to the Superintendent of Public Instruction (Appendix B).

### **Roles and Responsibilities of the State Superintendent**

### A. Communication and Counsel to the Board

With respect to providing information and counsel to the Board, the Superintendent will:

- 1. Keep the Board aware of relevant trends, public events of the Department, material external and internal changes, investigations, audits and any required corrective actions; with special attention to advising the Board on any changes in the assumptions upon which any Board policy has been previously established.
- 2. Submit the required monitoring data in a timely, accurate and understandable fashion, directly addressing provisions of the Board policies being monitored.
- 3. Marshal as many Department staff and external points of view, issues and options as needed for fully informed Board choices.
- 4. Present information in a brief and concise manner.
- 5. Make recommendations for Board action and presentations in a timely manner. Two months advance notification shall be given on items presented on an annual or biennial basis.
- 6. Identify key policy issues in proposed rules to be adopted, modified or rescinded at the first step of the multi-step rule-making process, and notify the State Board as to the most appropriate time to make recommendations.
- 7. Make the transcript and exhibits of hearings held pursuant to Chapter 119 of the ORC available for review by members of the State Board of Education. The Superintendent shall notify members in writing when such transcripts and exhibits are available. Copies thereof shall be made available to individual members upon request. Hearing officer reports submitted pursuant to Chapter 119 of the ORC shall contain an executive summary not to exceed two typewritten pages.

### B. Financial Planning and Legislative Recommendations

The Superintendent will plan expenditures in any fiscal year so expenditures will stay within budgeted guidelines, and will implement board approved priorities within budgetary needs.

The Superintendent will recommend legislative recommendations as appropriate and communicate these through the Board committee process.

### C. Investigation of Complaints

The Superintendent will investigate complaints about school districts that allege a violation of federal or state law, federal regulations or state rules. The Superintendent will also take appropriate action in assuring school district compliance with applicable laws, rules and regulations.

The Superintendent shall not be required to investigate complaints about school districts that come within the purview of the duties and responsibilities of locally elected boards of education, provided there is no allegation of a violation of federal or state law, federal regulations or state rules.

In the case of alleged or actual fiscal irregularities, the Superintendent will:

- 1. Notify the State Board when an audit finding or a written complaint alleging fiscal mismanagement against a school district is received by the department;
- Inform the State Board when an investigation of such issues results in a need for fiscal restitution by a school district and the terms of the proposed restitutions;
- 3. Notify the State Board when it appears State Board action will be required to begin revocation procedures against individual certificates;
- 4. Discuss with the State Board the option of referring an issue to the appropriate law enforcement authorities.

### Superintendent Performance, Accountability and Evaluation

The Superintendent is the Board's single, official link to the ODE. The Superintendent is accountable for all ODE performance and exercises all authority over requests transmitted into the ODE by the Board. Consequently, the Superintendent's performance will be considered to be synonymous with the ODE performance as a whole.

Inasmuch as the Board governs through written policies that address the highest level of organizational values, the Superintendent's work can be stated as performance in areas that include the ODE's progress toward accomplishment of the Board Approved Priorities and the ODE's operation within the boundaries of prudence and ethics established in Board policies.

The Superintendent will be measured by ODE performance to the degree it reflects and incorporates Board policies. Further, the criteria of the Superintendent performance evaluation form will include the following components:

- 1. Board member feedback regarding the State Superintendent's strengths and opportunities for improvement relative to each of the State Board Approved Priorities
- 2. Indicators of success relative to leadership, communication and policy making and Board members' ratings on the State Superintendent's performance for each listed indicator.

### **Executive Succession**

With respect to protecting the Board from sudden loss of the Superintendent's services, the Superintendent will assure that the senior leadership staff has sufficient executive knowledge of the procedures of the State Board, and the Superintendent will have in place a written executive succession plan.

# OFFICERS, ELECTION PROCEDURES, AND THE BIENNIAL ORGANIZATION MEETING

### Officers, Elections, and Term of Office

The officers of the State Board of Education shall consist of the president, vice president, secretary and such additional officers as the Board may from time to time designate.

- 1. The president shall be elected at the biennial organization meeting, or at the first meeting after any vacancy shall occur in such position, and shall serve for two years or until his or her successor shall be elected and qualified.
- 2. The vice president shall be elected at the biennial organization meeting, or at the first meeting after any vacancy shall occur in such position, and shall serve for two years or until his or her successor shall be elected and qualified.
- 3. The term of office for State Board officers is limited to two consecutive two-year terms within the same office.
- 4. The secretary of the Board shall be the Superintendent of Public Instruction pursuant to the provisions of Section 3301.09 of the ORC (Appendix A).

### **Role of Officers**

### President

The Board president presides at all meetings of the Board and is responsible for the integrity of the Board process. Integrity includes the efficient, orderly deliberation and resolution of Board issues and conduct of Board affairs.

The president has no authority over Department activities. However, the president does have authority, subject to any applicable Board policy, to (1) call special meetings of the Board; (2) represent Board positions and symbolize the Board image in public and at ceremonial events; and (3) determine Board procedures within the content of this manual.

Subject to Board approval, the president (1) determines Board agenda and committee charges; and (2) appoints and removes chairs and members of Board committees, commissions, and task forces.

The president shall be a member ex officio of all committees with all privileges of membership except that the president shall not vote or be counted in the committee quorum.

The president shall determine the appropriate action to take in reference to any uncertainty regarding any expense statement submitted by a member of the State Board.

### Vice President

The vice president shall assist the president in the duties of the president's office, as the president may direct, and shall preside at meetings and appoint members of committees during the president's absence. In the event of the president's death, resignation, incapacity, or disqualification, the vice president shall act in place of the president in all respects until the vacancy shall be filled or the incapacity removed.

### Secretary

The secretary (Superintendent of Public Instruction) shall attend all meetings of the Board, except at such times as the Board is considering the employment, retention, or salary of the Superintendent of Public Instruction. The secretary shall be responsible for keeping the meeting minutes and other official records, either in person or by an assistant. In the event of the secretary's inability to attend any meetings of the Board, except as noted above, he or she shall designate a subordinate to attend in his or her stead and make such reports and perform such other duties as would otherwise be performed by the Superintendent as secretary.

### Officer Election Procedures and the Biennial Organization Meeting

The current outgoing president, if available and on the Board, or the current outgoing past vice president, if available and on the Board, shall be the temporary chair of the biennial organization meeting. This meeting is held in January. If it is known in December that neither is available for the biennial organization meeting, the Board will elect a temporary chair in December. If, due to extenuating circumstances, there is no temporary chair available at the January meeting, then the most senior Board member (in terms of service) will preside over the election of the temporary chair. The temporary chair will preside over the following:

- 1. Calling the meeting to order
- 2. Reading the certification of election, as provided by the Secretary of State and executive appointments from the Governor
- Administering the oath of office to newly appointed, elected and re-elected members by the Chief Justice of the Supreme Court or a member of the Court designated by the Chief Justice
- 4. Calling roll
- 5. Approving minutes of December meeting
- 6. Appointing tellers from the ODE who will tally the nominations and votes

- 7. Proceeding with the election of the president by the following procedures:
  - a. Nomination and election shall be by ballot.
  - b. A second will not be required.
  - c. Any person nominated may withdraw his/her name.
  - d. A majority of those present and voting shall be required for election.
  - e. On each round of balloting, the name or names of the person or persons receiving the lowest number of votes shall be dropped from the list and the election shall proceed to the next round of balloting.
  - f. In the event of a tie between or among second-place candidates and if the first-place candidate does not have a majority on the ballot, a run-off vote will take place from the second-place candidates to select the second nominee. A vote will be taken between the second-place and first-place winner.
  - g. If this process does not result in a winner, the process will repeat itself from 7d 7f.

Upon election, the newly elected President shall assume the chair immediately and proceed with the election of the Vice President, following the same election procedures as outlined in 7a - 7g.

At any Board meeting, in accordance with Board policy on the introduction of a new main motion or resolution for consideration as described on page 22, the President, Vice President, or both may be voted out of office. The vote must be by at least two-thirds of the total number of Board members who are currently holding office. The election of replacement officers shall follow the same procedure set forth in 7a-7g.

### **MEETINGS**

### **Board Meeting Agenda**

The Board controls its own priorities, agenda and meetings. Priorities will be derived chiefly from what the Board intends to accomplish over the biennium. This longer-term base will be augmented by (1) further issues from Board members and (2) further issues from the Superintendent. It is expected that the Superintendent's issues will include all matters that the Board, as a matter of law, must decide.

The meeting agenda will be arranged by the president and vice president in consultation with the Superintendent. A Board member who wants to place an item on the meeting agenda should consult with Board leadership. An item can also be brought to the Board during the business meeting under new business in conformity with the policy on the introduction of a new main motion or resolution for consideration as described on page 22. Notice at the prior meeting is provided for items for consideration of the Board unless Board leadership determines that an urgent situation exists and emergency consideration is needed as described on page 22.

The meeting agenda is developed so that:

- a. The Board's priorities are served in an orderly and efficient fashion, including committee access to Board time when appropriate.
- b. The Superintendent has necessary access to Board time.
- c. The Board, as an early item of discussion at any given meeting, can make an informed decision about what items to add to, retain, reorder or eliminate from the president's recommended agenda.
- d. Any routine items of a ministerial nature may be placed on a consent agenda to be adopted at one time. Any member may request that an individual item on the consent agenda be removed and voted on separately.

### Quorum

A quorum of the Board shall consist of a majority of the voting members for the transaction of business (Appendix A, ORC Section 3301.05).

### **Regular Meetings**

Regular meetings shall be held at least once every three months, in accordance with the provisions of law at the office of the Superintendent of Public Instruction or anywhere in Ohio as designated by the Board (Appendix A, ORC Section 3301.04). Regular meetings of the State Board are held in January, April, July and October as required in statute.

### **Special Meetings**

Special meetings shall be held in accordance with the provisions provided by law (Appendix A, ORC Section 3301.04). The Board traditionally has business meetings every month except August. The annual Board Retreat is held in June.

### **Order of Business**

The order of business at all regular and special meetings shall conform to the following to such extent as the purpose of the meeting shall require:

- 1. Call to order
- 2. Roll call
- 3. Executive session
- 4. Approval of minutes of last meeting
- 5. Report of Superintendent of Public Instruction
- 6. Public participation on agenda items
- Voting on the Report and Recommendations of the Superintendent of Public Instruction
- 8. Old business
- 9. New business
- 10. Board Member Reports
- 11. Public Participation on non-agenda Items
- 12. Adjournment

Either the president or a majority of the Board may revise the order of business at any meeting, so as to best fit the requirements of time, the availability of necessary personnel and other pertinent considerations that will expedite the business of the meeting.

### **Minutes**

All minutes of meetings of the Board, including all resolutions and reports of committees introduced or adopted, shall be public records and shall be made available to the public for inspection at the office of the secretary, upon request at any reasonable time. Upon approval of the Board, the minutes represent the official record of the Board business meeting.

### **Parliamentary Procedure**

All matters of procedure not otherwise specifically covered in law or these policies shall be subject to the rules of parliamentary procedure set forth in the most recent edition of *Robert's Rules of Order*. (Appendix J, *Roberts Rules of Order*, Summary of Motions)

### Voting

Routine items of a ministerial nature may be placed on a consent agenda to be adopted at one time. Any member may request that an individual item on the consent agenda be removed and voted on separately.

Roll call votes on main motions are required in the following instances:

- 1. When required by Ohio law (e.g., a motion to go into executive session pursuant to Ohio's Sunshine Law, ORC Section 121.22);
- 2. When Ohio law or Board policy requires a specific majority vote in order to adopt an item (e.g., a majority of the full board or a two-thirds majority vote);
- 3. When the Board acts on the last resolution in the following processes:
  - a. educator certification or licensure
  - b. territorial transfers
  - c. payment in lieu of transportation
  - d. administrative rules
- 4. When the chair decides to conduct a roll call vote on a given motion;
- 5. When the chair decides that a voice vote led to an uncertain result; and
- 6. When a member moves to divide the assembly after an uncertain voice vote.

A roll call vote can also be proposed by a member of the Board making an incidental motion to require a roll call vote on a pending main motion. Upon the offering and seconding of a motion to require a roll call vote, the chair may inquire informally to determine whether there is a consensus concerning the voting method. Absent a consensus, the motion to require a roll call vote shall be voted upon by roll call. At least four of the members of the Board present and voting must vote in the affirmative in order for the motion to require a roll call vote to be adopted.

Voting on all other main motions shall be by voice votes. Votes to rescind administrative rules and to accept the voluntary surrender of an educator's license may

also be conducted by voice votes. The chair of the meeting will announce the result of voice votes.

Other matters relating to privileged and subsidiary motions, as set forth in *Robert's Rules of Order*, shall be called for by voice vote.

Roll call votes shall be called in order of Board member who made the motion and the Board member who seconded the motion, then alphabetically beginning with the name following the Board member who seconded the motion. The president who, as a member of the Board, shall be entitled to cast a vote on all matters, (or other presiding officer in the president's absence) shall vote last. The president may cast a vote to resolve a tie, but should a vote be cast during the calling of the voting roll, no further vote is afforded for this purpose.

The secretary or designee shall record the "ayes" and "nays" upon each such motion and enter them in the official minutes of the meeting. A member may change a vote at any time until the result of the vote shall be announced by the president (or other presiding officer in the president's absence), or may pass upon the roll call and cast the vote at any time prior to the announcement of the vote by the president (or other presiding officer in the president's absence). A member abstaining from voting shall not be entitled to move for reconsideration of the action taken.

The secretary shall have no vote upon any matters being acted upon by the Board, but may be called upon by the Board to express opinions, make recommendations, or report upon matters pending, or may ask leave of the Board to do so when deemed desirable.

Voting procedures applicable to election of officers are set forth in the section concerning election of officers on pages 17 and 18.

### **New Main Motion or Resolution for Consideration**

During new business, any member of the Board may propose a new main motion or resolution and request that it be considered under new business at the next regularly scheduled business meeting unless it is determined that there is a need for emergency consideration.

### **Emergency Consideration**

The Board president and vice president, if both are present, or the presiding officer, must agree to immediate Board consideration of a proposed new main motion or resolution, which, due to extenuating circumstances, demands immediate action. The Board leadership's decision to declare an emergency may be overruled by a majority of the Board members present and voting, in which case the main motion or resolution will appear as new business on the agenda of the next regularly scheduled Board business

meeting. A Board leadership decision not to declare an emergency may also be overruled by a majority of the Board members present and voting, in which case the main motion or resolution will appear as new business during the present meeting.

### **Referral to Committee**

Consideration of a new main motion or resolution may be immediately assigned to a committee at the discretion of the Board president or by motion and majority approval by the Board. Referral by the Board president may be overruled by a majority of the Board membership present and voting, in which case the main motion or resolution will appear as new business on the agenda of the next regularly scheduled Board business meeting or at the current meeting if determined an emergency by either the Board officers or by a majority vote of the Board.

This policy does not relate to actions taken based upon the "Report of the Superintendent of Public Instruction."

### **Public Participation**

Members of the public, who wish to address the Board on items on the Board's approved agenda, which are scheduled for a vote at that regular or special meeting, will be permitted to address the Board at a scheduled time prior to the casting of any vote. Individuals, who wish to address the Board on issues of general interest or items not scheduled for a vote at that meeting, will be permitted to address the Board following the formal business agenda of that regular or special meeting. In either instance, the individual may speak for a period not to exceed five minutes. The President may impose further limitations on public participation as deemed appropriate or necessary.

No one, including attorneys representing their parties, will be permitted to address the Board on matters that will be, or have been, the subject of an administrative hearing under the provisions of Chapter 119 of the ORC, or other statute or rule. This includes matters such as transfer of territory from one school district to another or the possible revocation of an individual's permit, license, or certificate.

### **Recording of Board Meetings**

In order to promote the orderly transaction of business, any party intending to broadcast, televise, record or photograph any Board meeting is requested to give notice of such intent to the Board through the Superintendent of Public Instruction at least twenty-four hours prior to the scheduled meeting. However, the Board shall not refuse permission to broadcast, televise, record or photograph a meeting based solely upon a determination that prior written notice was not provided in a timely fashion.

Board meetings may be broadcast, televised, recorded or photographed in accordance with the following guidelines:

- 1. The president of the Board or designee shall designate a reasonable location, or locations, within the meeting room from which the broadcasting, televising, recording or photographing may take place;
- 2. The broadcasting, televising, recording or photographic equipment employed at the Board meeting shall be silent, unobtrusive, self-contained and self-empowered so as not to interfere with any individual's ability to hear, see and participate in the meeting and so as not to interfere with the orderly transaction of Board business;
- 3. If the President or designee determines that such broadcasting, televising, recording or photographing is interfering with the orderly transaction of Board business, is inhibiting a participant's presentation to the Board or is interfering with the dignity of the proceedings, the presiding officer or designee may terminate or limit such broadcasting, televising, recording or photographing after a reasonable request to correct such interference has not been successful.

### **COMMITTEES**

### **Committee Principles**

The Board president may independently, or upon Board action, appoint committees, subcommittees and task forces (hereafter all referred to as "committees"), as needed, to carry out specific Board tasks, to preliminarily consider matters to come before the Board or to evaluate policy alternatives.

The Board president shall appoint the members and chairs for all committees. At the time of an appointment of a subcommittee or task force, the Board president will indicate through which Board committee the subcommittee or taskforce will report.

Any action of a committee shall require a quorum of members. A quorum shall consist of a majority of total committee membership. Prior to consideration by the full Board, all motions and resolutions coming from a committee must be approved by vote of the members of the committee.

No Board committee may act independently on behalf of the Board unless the committee's charge specifically empowers the committee to act on the Board's behalf.

Board committees shall meet at the call of the committee chairperson. Such meetings must be conducted in public session and official minutes must be recorded and promptly produced. All committee meetings are open to all members of the Board and are public meetings [(ORC 121.22 (B) (1) (b)]. Public meeting notices of committee meetings and arrangements should be coordinated through the Office of Board Relations.

In the event that the committee chair is unavailable to chair the meeting, the Board president shall appoint a temporary chair. In an emergency situation in which the Board president is unable to appoint the temporary chair, the committee shall elect a temporary chair.

Requests for work products from the ODE to assist in the committee function should come from the Board committee chairs. Individual Board member requests for work products from the Department should go through Board leadership, committee chairs or through a committee motion. However, requests for information that is readily available are made directly to the Office of Board Relations in order to track and assure completion of requests.

If a committee is to submit a report to the full Board that requires action of the Board, the committee report shall be approved by a majority of the committee members.

During new business, new main motions or resolutions may be referred to a committee in accordance with the Board policy on referral to committee found on page 23.

During the consideration of old or new business, any Board member may move to refer specific matters to a committee. If approved by a majority of Board members in

attendance, the Board president may appoint a new committee or may refer matters to an existing committee.

### **Executive Committee of the Board**

Members of the Executive Committee shall be the president, vice president, secretary, immediate past president, chairs or co-chairs of the Board committees, and the Board legislative liaisons. The Executive Committee reviews and facilitates the implementation of Board policies; facilitates the process for bringing legislative recommendations from individuals and/or committee chairs to the full Board for consideration; assures the implementation of committee charges, work targets, and requested tasks; assists the Board Officers and the State Superintendent with long-range planning for the Board's work and performs any other functions necessary for the Board to fulfill its mission.

### **Appointments to Committees and Commissions**

Appointments to committees and commissions as required by law or State Board action shall be exercised in the following manner:

### **Committees of the State Board**

The chair and members of a committee shall be appointed by the president. Per ORC Section 3301.07, there shall be no permanent or standing committees (Appendix A). Any Board member may express interest and willingness to serve on any committee. When appointing a committee, the president will identify the charge of the committee. When one or more State Board members are to serve on any external committee or task force, the Board president shall make these appointments.

### Committees or Commissions Required by Law or State Board Action

State Board appointments to external committees or commissions (currently State Library Board and Educator Standards Board) shall be made from nominations submitted by institutions, organizations and associations representing the specific categories called for by the membership requirements of the committee or commission. Such institutions, organizations and associations shall be requested to nominate at least two individuals for each position, so representation on the basis of geographic region, race and gender can be obtained.

# SUSPENSION OR MODIFICATION OF PROCEDURES OF THE STATE BOARD

Procedures of the State Board may be modified or suspended by a majority vote of the members present, provided notice of such modification has been made at the preceding meeting of the State Board. If notice of such modification or suspension has not been made at the preceding meeting of the State Board, the procedures may be modified or suspended by a 2/3 vote of the members present.

### **APPENDIX A**

### **Ohio Revised Code**

### **SECTION 3301.01**

### State board of education created

(A) There is hereby created the state board of education consisting of nineteen members with eleven elected members, one member each to be elected in accordance with <u>section 3301.03</u> of the Revised Code from each of the districts established in accordance with division (B) of this section, and with eight members to be appointed by the governor with the advice and consent of the senate.

In addition to the nineteen elected or appointed members, the chairperson of the committee of the senate that primarily deals with education and the chairperson of the committee of the house of representatives that primarily deals with education shall be nonvoting ex officio members of the board.

- (B)(1) The territory of each state board of education district for each elected voting member of the board shall consist of the territory of three contiguous senate districts, as established in the most recent apportionment for members of the general assembly, but the territory of no senate district shall be part of the territory of more than one state board of education district. Each state board of education district shall be as compact as practicable. The districts shall include, when practicable, some districts that primarily consist of territory in rural areas and some districts that primarily consist of territory in urban areas.
- (2) If, after the apportionment for members of the general assembly is made in any year, the general assembly does not during that year enact legislation establishing state board of education districts in accordance with division (B)(1) of this section, the governor shall designate the boundaries of the districts in accordance with division (B)(1) of this section no later than the thirty-first day of January of the year next succeeding such apportionment. Upon making such designation, the governor shall give written notice of the boundaries of the districts to each member of the state board of education, including the nonvoting ex officio members; the superintendent of public instruction; the president of the senate; the speaker of the house of representatives; and the board of elections of each county in each new district. On the first day of February in any year in which the governor designates the boundaries of state board of education districts under this section, the state board of education districts as they existed prior to that date shall cease to exist and the new districts shall be created.

### **SECTION 3301.02**

### Term of office for state board members

(A) Elected voting members of the state board of education shall be elected as required by expiration of respective terms, each for a term of four years or until a successor is elected and qualified. One elected member shall be elected from each district respectively in which the term of office of a board member expires on the first day of January following the election. The term of office of each member so elected shall begin on the first day of January immediately following this election.

- (B) At any time the boundaries of state board of education districts are changed under division (B) of section 3301.01 of the Revised Code, a member of the state board whose term will not expire within two years of the time the change in boundaries is made shall represent, for the remainder of the term for which the member was elected, the state board district containing the largest portion of the population of the district from which the member was elected. If more than one member whose term will not so expire would represent the same district under the provisions of this section, either the general assembly, if the general assembly enacted legislation establishing those districts under division (B)(2) of section 3301.01 of the Revised Code, or the governor, if the governor designated the boundaries of the districts under that division, shall designate which member shall represent each district for the balance of the members' terms.
- (C) Appointed voting members of the board shall serve four-year terms beginning the first day of January and ending on the thirty-first day of December. Except as provided in division (D) of this section, members may be reappointed.
- (D) No person, elected or appointed, shall hold the office of member of the state board of education for a period of longer than two successive terms of four years. Terms shall be considered successive unless separated by a period of four or more years. Only terms beginning on or after January 1, 1996, shall be considered in determining an individual's eligibility to hold office.

### Qualifications, oath, salary, expenses of members

Each elected voting member of the state board of education shall be a qualified elector residing in the territory composing the district from which the member is elected, and shall be nominated and elected to office as provided by Title XXXV of the Revised Code. Each appointed voting member of the board shall be a qualified elector residing in the state. At least four of the appointed voting members shall represent rural school districts in the state, as evidenced by the member's current place of residence and at least one of the following:

- (A) The member's children attend, or at one time attended, school in a rural district;
- (B) The member's past or present occupation is associated with rural areas of the state;
- (C) The member possesses other credentials or experience demonstrating knowledge and familiarity with rural school districts.

No elected or appointed voting member of the board shall, during the member's term of office, hold any other public position of trust or profit or be an employee or officer of any public or private elementary or secondary school. Before entering on the duties of office, each elected and appointed voting member shall subscribe to the official oath of office.

Each voting member of the state board of education shall be paid a salary fixed pursuant to division (J) of section 124.15 of the Revised Code, together with the member's actual and necessary expenses incurred while engaged in the performance of the member's official duties or in the conduct of authorized board business, and while en route to and from the member's home for such purposes.

### **Meetings**

Between the first and thirty-first day of January of each odd-numbered year, the state board of education shall hold an organization meeting at which time it shall adopt rules of procedure, elect a president and a vice-president each of whom shall serve for two years or until the president's or vice president's successor is elected and qualified, and transact such business as the board deems advisable.

The state board of education shall hold regular meetings once every three months and at such times as they may be called as provided in this section. Special meetings of the board may be called by the president, and, upon written request signed by at least a majority of the members, the president shall call a special meeting of the board. The president shall give notice through the superintendent of public instruction by registered mail to each member of the board at least ten days prior to the time of any special meeting. The state board of education shall hold its meetings anywhere in Ohio designated by the board.

### **SECTION 3301.05**

### Quorum, public meetings, official records of board.

A majority of the voting members of the state board of education shall constitute a quorum for the transaction of business. Official actions of the state board, including the making and adoption of motions and resolutions, shall be transacted only at public meetings open to the public. The superintendent of public instruction, or a subordinate designated by him, shall record all official actions taken at each meeting of the board in a book provided for that purpose, which shall be a public record. The record of the proceedings of each meeting of the board shall be read at its next succeeding meeting and corrected and approved, which approval shall be noted in the proceedings. The president shall sign the record and the superintendent of public instruction or his subordinate attest it.

### **SECTION 3301.06**

### **Vacancies**

A vacancy in the state board of education may be caused by death, non-residence, resignation, removal from office, failure of a person elected to qualify within ten days after the organization of the board or of the person's election, removal from the district of election or from residence in the state, or absence from any two consecutive regular meetings of the board if such absence is caused by reasons declared insufficient by a vote of twelve members of the board. When a vacancy occurs in the office of an elected member, the governor shall, within a period of thirty days and with the advice and consent of the senate, appoint a qualified person residing in the district in which the vacancy occurred to fill the vacancy until the next general election at which members of the state board of education are elected, at which time a qualified elector residing in the district in which the vacancy occurred shall be elected for the unexpired term. Such member shall assume office at the next succeeding meeting of the board. When a vacancy occurs in the office of an appointed member, the governor shall, within a period of thirty days and with the advice and consent of the senate, appoint a qualified person to serve the remainder of the term.

### Powers of state board

The state board of education shall exercise under the acts of the general assembly general supervision of the system of public education in the state. In addition to the powers otherwise imposed on the state board under the provisions of law, the board shall have the following powers:

- (A) Exercise policy forming, planning and evaluative functions for the public schools of the state, and for adult education, except as otherwise provided by law;
- (B) Exercise leadership in the improvement of public education in this state, and administer the educational policies of this state relating to public schools, and relating to instruction and instructional material, building and equipment, transportation of pupils, administrative responsibilities of school officials and personnel, and finance and organization of school districts, educational service centers and territory. Consultative and advisory services in such matters shall be provided by the board to school districts and educational service centers of this state. The board also shall develop a standard of financial reporting which shall be used by all school districts and educational service centers to make their financial information available to the public in a format understandable by the average citizen and provide year-to-year comparisons for at least five years. The format shall show, among other things, district and educational service center revenue by source; expenditures for salaries, wages, and benefits of employees, showing such amounts separately for classroom teachers, other employees required to hold licenses issued pursuant to sections 3319.22 to 3319.31 of the Revised Code, and all other employees; expenditures other than for personnel, by category, including utilities, textbooks and other educational materials, equipment, permanent improvements, pupil transportation, extracurricular athletics, and other extracurricular activities; and per pupil expenditures.
- (C) Administer and supervise the allocation and distribution of all state and federal funds for public school education under the provisions of law, and may prescribe such systems of accounting as are necessary and proper to this function. It may require county auditors and treasurers, boards of education, educational service center governing boards, treasurers of such boards, teachers, and other school officers and employees, or other public officers or employees, to file with it such reports as it may prescribe relating to such funds, or to the management and condition of such funds.
- D) Formulate and prescribe minimum standards to be applied to all elementary and secondary schools in this state for the purpose of requiring a general education of high quality. Such standards shall provide adequately for: the licensing of teachers, administrators, and other professional personnel and their assignment, according to training and qualifications; efficient and effective instructional materials and equipment, including library facilities; the proper organization, administration and supervision of each school, including regulations for preparing all necessary records and reports and the preparation of a statement of policies and objectives for each school; buildings, grounds, health and sanitary facilities and services; admission of pupils, and such requirements for their promotion from grade to grade as will assure that they are capable and prepared for the level of study to which they are certified; requirements for graduation; and such other factors as the board finds necessary.

In the formulation and administration of such standards for nonpublic schools the board shall also consider the particular needs, methods and objectives of those schools, provided they do not conflict with the provision of a general education of a high quality and provided that regular procedures shall be followed for promotion from grade to grade of pupils who have met the educational requirements prescribed.

(E) May require as part of the health curriculum information developed under <u>section 2108.15</u> of the Revised Code promoting the donation of anatomical gifts pursuant to <u>Chapter 2108.</u> of the Revised Code.

and <u>may</u> provide the information to high schools, educational service centers, and joint vocational school district boards of education;

- (F) Prepare and submit annually to the <u>governor</u> and the general assembly a report on the status, needs and major problems of the public schools of the state, with recommendations for necessary legislative action and a ten-year projection of the state's public and nonpublic school enrollment, by year and <del>by</del> grade level;
- (G) Prepare and submit to the director of budget and management the biennial budgetary requests of the state board of education, for its agencies and for the public schools of the state;
- (H) Cooperate with federal, state and local agencies concerned with the health and welfare of children and youth of the state;
- (I) Require such reports from school districts and educational service centers, school officers, and employees as are necessary and desirable. The superintendents and treasurers of school districts and educational service centers shall certify as to the accuracy of all reports required by law or state board or state department of education rules to be submitted by the district or educational service center and which contain information necessary for calculation of state funding. Any superintendent who knowingly falsifies such report shall be subject to license revocation pursuant to section 3319.31 of the Revised Code.
- (J) In accordance with <u>Chapter 119</u> of the Revised Code, adopt procedures, standards, and guidelines for the education of handicapped children pursuant to <u>Chapter 3323</u> of the Revised Code, including procedures, standards, and guidelines governing programs and services operated by county boards of mental retardation and developmental disabilities pursuant to section 3323.09 of the Revised Code;
- (K) For the purpose of encouraging the development of special programs of education for academically gifted children, employ competent persons to analyze and publish data, promote research, advise and counsel with boards of education, and encourage the training of teachers in the special instruction of gifted children. The board may provide financial assistance out of any funds appropriated for this purpose to boards of education and educational service center governing boards for developing and conducting programs of education for academically gifted children.
- (L) Require that all public schools emphasize and encourage, within existing units of study, the teaching of energy and resource conservation as recommended to each district board of education by leading business persons involved in energy production and conservation, beginning in the primary grades.
- (M) Formulate and prescribe minimum standards requiring the use of phonics as a technique in the teaching of reading in grades kindergarten through three. In addition, the state board shall provide in-service training programs for teachers on the use of phonics as a technique in the teaching of reading in grades kindergarten through three.
- (N) Develop and modify as necessary a state plan for technology to encourage and promote the use of technological advancements in educational settings.

The board may adopt rules necessary for carrying out any function imposed on it by law, and may provide rules as are necessary for its government and the government of its employees, and may delegate to the superintendent of public instruction the management and administration of any function imposed on it by law. It may provide for the appointment of board members to serve on temporary committees established by the board for such purposes as are necessary. Permanent or standing committees shall not be created.

### Duties, powers, and organization of department of education

The department of education hereby created, shall be the administrative unit and organization through which the policies, directives, and powers of the state board of education and the duties of the superintendent of public instruction are administered by such superintendent as executive officer of the board.

The department of education shall consist of the state board of education, the superintendent of public instruction, and a staff of such professional, clerical, and other employees as may be necessary to perform the duties and to exercise the required functions of the department.

The department of education shall be organized as provided by law or by order of the state board of education. The superintendent of public instruction shall be the chief administrative officer of such department, and, subject to board policies, rules, and regulations, shall exercise general supervision of the department.

The department of education shall be subject to all provisions of law pertaining to departments, offices, or institutions established for the exercise of any function of the state government; excepting that it shall not be one of the departments provided for under division (A) of <a href="section 121.01">section 121.01</a> of the Revised Code. In the exercise of any of its functions or powers, including the power to make rules and regulations and to prescribe minimum standards the department of education, and any officer or agency therein, shall be subject to <a href="Chapter 119">Chapter 119</a> of the Revised Code. The headquarters of the department of education shall be at the seat of government, where office space suitable and adequate for the work of the department shall be provided by the appropriate state agency. There the state board of education shall meet and transact its business, unless the board chooses to meet elsewhere in Ohio as provided by <a href="section 3301.04">section 3301.04</a> of the Revised Code. There the records of the state board of education and the records, papers, and documents belonging to the department shall be kept in charge of the superintendent of public instruction.

The superintendent of public instruction shall recommend, for approval by the board, the organization of the department of education, and the assignment of the work within such department. The appointment, number, and salaries of assistant superintendents and division heads shall be determined by the state board of education after recommendation of the superintendent of public instruction. Such assistant superintendents and division heads shall serve at the pleasure of the board. The superintendent of public instruction may appoint, fix the salary, and terminate the employment of such other employees as are engaged in educational or research duties.

### **SECTION 3301.09**

### Superintendent shall be secretary of board.

The superintendent of public instruction shall serve as secretary to the state board of education, and shall attend all meetings of the board, or designate a subordinate to attend for him if he is unable to be present, except at such times as the board is considering the employment, retention, or salary of the superintendent of public instruction.

### APPENDIX B

# EXECUTIVE SUMMARY OF STATE BOARD STATUTORY AUTHORITY AND RESPONSIBILITIES<sup>1</sup>

References to the Ohio Revised Code and Ohio Administrative Rules are found at the State Board Home page on the Ohio Department of Education website at <a href="https://www.ode.state.oh.us">www.ode.state.oh.us</a>; "Board Member Quick Links": Ohio Administrative and Revised Code.

### **Executive/Administrative Functions**

Policymaking and Leadership

- General supervision of the system of public education in Ohio<sup>2</sup>
- Policy forming, planning and advisory functions for public schools and adult education<sup>3</sup>
- Leadership in the improvement of public education in Ohio<sup>4</sup>
- Administer State educational policies relating to public schools, instruction, building and equipment, pupil transportation, responsibilities of school officials and personnel, finance and organization of school districts and district territory<sup>5</sup>
- Appoint Board members to serve on temporary committees (permanent or standing committees shall not be created)<sup>6</sup>
- Perform designated functions with respect to the development of special education programs for children who are deaf, blind, learning disabled, seriously emotionally disturbed, or otherwise handicapped<sup>7</sup>
- In cooperation with the federal government, serve as the state administrative agency in vocational education matters<sup>8</sup>
- Cooperate with federal, state, and local agencies concerned with the health and welfare of youth<sup>9</sup>
- Prepare an annual report with recommendations for necessary legislative action<sup>10</sup> and prepare biennial budgetary requests<sup>11</sup>

<sup>&</sup>lt;sup>1</sup> The detailed discussion of the authority of the State Board, Department of Education and Superintendent of Public Instruction may be obtained from the Legal Office. All of the statutory references below are to the Ohio Revised Code.

<sup>&</sup>lt;sup>2</sup> 3301.07

<sup>3 3301.07(</sup>A)

<sup>&</sup>lt;sup>4</sup> 3301.07(B)

<sup>&</sup>lt;sup>5</sup> <u>Id</u>

 $<sup>6\</sup>frac{1}{3301.07}$  (last paragraph)

<sup>&</sup>lt;sup>7</sup> 3323.01(A); 3323.02

<sup>&</sup>lt;sup>8</sup> 3303.04

<sup>9 3301.07(</sup>H)

<sup>&</sup>lt;sup>10</sup> 3301.07(F)

<sup>&</sup>lt;sup>11</sup> 3301.07(G)

- Encourage innovative and exemplary school-parent and school-business partnerships<sup>12</sup>
- Approve vacation-period activities in reference to promotions and diplomas, <sup>13</sup> and prescribe form of age and schooling certificates <sup>14</sup>
- Supervise the state school for the deaf and the state school for the blind and, on the recommendation of the Superintendent of Public Instruction, appoint a superintendent for each such institution<sup>15</sup>
- Inspect and approve teacher training institutions and licensure of graduates<sup>16</sup>
- With the assistance of the State Community Service Advisory Committee, develop a plan to assist school districts in the implementation of community service education programs and activities, which shall include technical assistance to school boards in obtaining funds for community service education from any source<sup>17</sup>
- Establish continuing programs of in-service training in school district budget and finance for superintendents of schools or their designees, business managers, treasurers, and members of boards of education<sup>18</sup>
- May delegate to the Superintendent of Public Instruction the management and administration of any function imposed on it by law<sup>19</sup>

### Monitoring and Oversight

- Administer the public school foundation program, with the approval of the Controlling Board<sup>20</sup>
- Exercise authority under ORC Chapter 3318 relating to state-assisted purchase of additional classroom facilities by school districts
- Require reports from school districts, school officers and employees as are necessary and desirable,<sup>21</sup> and require annual reports from private schools<sup>22</sup>
- Furnish forms for all school districts, on which school districts may annually report school statistics and other such information as the State Board may require, including information relating to certain court proceedings involving boards of education and state officials<sup>23</sup>

<sup>13</sup> 3313.57

 $<sup>^{12}</sup>$  3301.131

<sup>&</sup>lt;sup>14</sup> 3331.01

<sup>&</sup>lt;sup>15</sup> 3325.01

<sup>&</sup>lt;sup>16</sup> 3319.23

<sup>&</sup>lt;sup>17</sup> 3301.70

<sup>&</sup>lt;sup>18</sup> 3301.072

<sup>19 3301.07 (</sup>last paragraph)

 $<sup>^{20}</sup>$  3317.01 et seq.

<sup>&</sup>lt;sup>21</sup> 3301.07(I)

<sup>&</sup>lt;sup>22</sup> 3301.14

<sup>&</sup>lt;sup>23</sup> 3319.33

- Prescribe the form of records pertaining to examinations by school physicians.<sup>24</sup>
- Prepare the following annual reports for each school district: a funding and expenditure accountability report; a school safety and discipline report; a student equity report; a school enrollment report; a student retention report; and a school district performance report<sup>25</sup>
- Create and maintain an internal unit within the Department to administer the collection and compilation of data received from school districts<sup>26</sup>
- Make reports concerning the failure of any school district to supply timely and accurate information required for the Education Management Information System (EMIS), make recommendations for corrective action, and withhold a percentage of state foundation plan payments to school districts which fail to make timely and accurate EMIS reports or take prompt corrective action<sup>27</sup>
- Enforce the law relative to the operation of school lunchrooms, <sup>28</sup> and the sale of uniform school supplies, foods, and candies on school premises, <sup>29</sup> and formulate and adopt guidelines on the types of foods which may be sold in public schools <sup>30</sup>
- Upon the request, furnish technical assistance in the preparation of budgets, development of fiscal controls, preparation of financial statements and reports, revenue estimating, or in the compliance with any certification requirements relating to the district's revenue or expenditures<sup>31</sup>
- Grant or deny requests for exemptions from specific statutes or administrative rules which are submitted by educationally excellent or educationally deficient school districts, or by districts implementing an innovative educational pilot program<sup>32</sup>
- Approve and have general oversight of community school sponsors, provide technical assistance to community schools, and under certain circumstances suspend the operation of a community school and itself assume the direction of such school<sup>33</sup>

<sup>25</sup> 3302.031

<sup>&</sup>lt;sup>24</sup> 3313.71

<sup>&</sup>lt;sup>26</sup> 3301.133

<sup>&</sup>lt;sup>27</sup> 3301.0714(L)

<sup>&</sup>lt;sup>28</sup> 3313.81

<sup>&</sup>lt;sup>29</sup> 3313.811

<sup>&</sup>lt;sup>30</sup> 3313.814

<sup>&</sup>lt;sup>31</sup> 3301.073

<sup>&</sup>lt;sup>32</sup> 3302.02; 3302.07

<sup>&</sup>lt;sup>33</sup> 3314.015; 3314.02; 3314.072

#### Personnel Matters

- Appoint the Superintendent of Public Instruction<sup>34</sup> and members of the State Library Board<sup>35</sup> and Educator Standards Board<sup>36</sup>
- Approve the organization of the Department of Education, and the appointment, number, and salaries of designated personnel therein<sup>37</sup>
- Employ competent persons to analyze and publish data, promote research, advise and counsel boards of education, and encouragement of teacher training in the instruction of gifted children<sup>38</sup>
- Inspect at least annually all institutions under the control of the Department of Job and Family Services, the department of mental health and mental retardation, and the department of rehabilitation and correction which employ teachers and, if desirable, report on such matters<sup>39</sup>

# **Quasi-Legislative Functions**

#### General

- Prescribe minimum standards to be applied to all elementary and secondary schools in the state that shall provide for licensing and assignment of teachers and administrators, instructional materials and equipment, the proper organization and supervision of each school, records and reports, buildings, health and sanitary facilities, admission of pupils, promotion from grade to grade, requirements for graduation, and such other factors as the State Board finds necessary<sup>40</sup>
- Adopt rules and regulations for the carrying out of any function imposed on it<sup>41</sup>
- Provide regulations for State Board government and the government of its employees<sup>42</sup>

#### School Finance

- Adopt rules and regulations for implementation of state subsidies for the purchase of school buses<sup>43</sup> and summer school remediation programs<sup>44</sup>
- Adopt rules for the distribution of federal funds for adult education programs<sup>45</sup>

<sup>&</sup>lt;sup>34</sup> 3301.07(B)

<sup>&</sup>lt;sup>35</sup> 3375.01

 $<sup>^{36}</sup>$  3319.60

<sup>&</sup>lt;sup>37</sup> 3301.13

<sup>&</sup>lt;sup>38</sup> 3301.07(K)

<sup>&</sup>lt;sup>39</sup> 3301.15 <sup>40</sup> 3301.07(D)

<sup>41 3301.07 (</sup>last paragraph)

<sup>&</sup>lt;sup>43</sup> 3317.024(E); 3317.07

<sup>&</sup>lt;sup>44</sup> 3317.024(A)

<sup>&</sup>lt;sup>45</sup> 3301.40

- Acting jointly with the State Auditor, develop rules governing the methods by which superintendents, treasurers, and board presidents are to estimate revenues for purposes of signing any certificate of available funds required by ORC § 5705.412<sup>46</sup>
- Adopt rules for the implementation of state subsidies for districts that must pay tuition for children in Department of Youth Services facilities,<sup>47</sup> adult basic literacy programs,<sup>48</sup> school lunch and breakfast programs,<sup>49</sup> migrant worker education programs,<sup>50</sup> and special transportation programs for educable developmentally handicapped students<sup>51</sup>

#### Licensure and Professional Development

- Adopt standards for, and administer provisions of law relative to the issuance of teachers' licenses and establish standards and courses of study for preparation of teachers<sup>52</sup>
- Prescribe minimum qualifications for the issuance of educational aide permits, and issue such permits upon the payment of such fees and according to such regulations as it may establish<sup>53</sup>
- Establish standards for the licensing of school district treasurers and business managers for the renewal of such licenses, and for the issuance of duplicate copies of such licenses<sup>54</sup>
- Prescribe standards and requirements which shall be met by persons who are eligible for the Ohio scholarship fund for teacher trainees for the purpose of relieving the teacher shortage<sup>55</sup>
- Adopt rules for administration of a grant program designed to reward teachers who have obtained certificates or licenses issued by the National Board for Professional Teaching Standards<sup>56</sup>

#### Data and Technology

- Develop and modify, as necessary, a state plan for technology to encourage and promote the use of technological advancements in educational settings<sup>57</sup>
- Establish a statewide education information system and adopt rules for its implementation and for the preparation of annual information profiles of individual school districts<sup>58</sup>

<sup>47</sup> 3317.024(F)

<sup>&</sup>lt;sup>46</sup> 5705.412(D)

<sup>&</sup>lt;sup>48</sup> 3317.024(H)

<sup>&</sup>lt;sup>49</sup> 3317.024(K)

<sup>&</sup>lt;sup>50</sup> 3317.024(C)

<sup>51 3317.024(</sup>J)

<sup>&</sup>lt;sup>52</sup> 3319.22 et seq.

<sup>&</sup>lt;sup>53</sup> 3319.088

 $<sup>^{54}</sup>$  3301.074

 $<sup>^{55}</sup>$  3315.33 -3315.35

<sup>&</sup>lt;sup>56</sup> 3319.55

<sup>57 3301.07(</sup>N)

<sup>&</sup>lt;sup>58</sup> 3301.0714

Adopt rules governing the purchasing and leasing of data processing services and equipment for educational service centers and all local, exempted village, city, county, and joint vocational school districts, including provisions for the establishment of an Ohio Education Computer Network (OECN), which may include up to twenty-seven data acquisition sites operating concurrently<sup>59</sup>

# Special Education

- Under the provisions of ORC Chapter 3323, promulgate standards governing special education programs and their operation, 60 including programs operated by county boards of mental retardation and developmental disabilities, 61 and for identifying, locating, and evaluating all handicapped children in the state 62
- Establish procedures and standards for the placement of handicapped children in appropriate educational programs, <sup>63</sup> and for the protection of the constitutional right of such children to due process of law <sup>64</sup>
- Adopt a state plan for the provision of special education services to all handicapped children in the state, whether or not of compulsory school age, and adopt such standards and procedures as are necessary to develop, implement, monitor, and assure compliance with the state plan<sup>65</sup>
- Adopt regulations relative to the admission of pupils to the state school for the blind and the state school for the deaf, and shall provide educational programs in reference to the instruction of the blind or deaf<sup>66</sup>

#### Student Achievement

- Establish school district performance indicators, annually identify school districts which are educationally excellent or educationally deficient, assist educationally deficient school districts in the development of corrective action plans, and evaluate progress in correcting educational deficiencies<sup>67</sup>
- Establish rules for designating grade point average (GPA) equivalencies for purposes of determining when a student may be exempted from passing a subject area graduation test<sup>68</sup>
- Establish and submit to the Commission on Education Improvement a clear and measurable set of educational performance goals with specific timetables for their achievement, and submit to the Commission, in July of

<sup>60</sup> 3323.02

<sup>&</sup>lt;sup>59</sup> 3301.075

<sup>61 3301.07(</sup>J)

<sup>&</sup>lt;sup>62</sup> 3323.03

<sup>&</sup>lt;sup>63</sup> 3323.04

<sup>&</sup>lt;sup>64</sup> 3323.05

<sup>65 3323.06</sup> 

<sup>&</sup>lt;sup>66</sup> 3325.011 et seq.

 $<sup>^{67}\,3302.01\</sup>text{--}3302.05$ 

 $<sup>^{68}</sup>$  3313.615

each odd-numbered year, a report on the progress made toward these goal<sup>69</sup>

#### Academic Standards

- Prescribe standards for part-time schools or classes<sup>70</sup>
- Develop and recommend a model high school science curriculum, lists of minimum supplies and equipment for high school science, and science safety procedures, which shall include safety training for students and teachers<sup>71</sup>
- Formulate and prescribe minimum standards requiring the use of phonics as a technique in the teaching of reading in grades K-3, and provide appropriate in-service training for teachers in such grades<sup>72</sup>
- Adopt statewide academic standards for grades K-12 in reading, writing, mathematics, science and social studies, as well as related model curricula, achievement tests, and diagnostic assessments<sup>73</sup>
- Adopt rules for instruction in intensive, systematic phonetics as required by law for reading intervention<sup>74</sup>
- Require that all public schools emphasize and encourage, within existing units of study, the teaching of energy and resource conservation, beginning in the primary grades<sup>75</sup>

#### **Quasi-Judicial Functions**

General Monitoring and Oversight

- Classify and charter high schools, pursuant to the Board's adopted standards, and revoke charters of schools not meeting its standards<sup>76</sup>
- Approve and have general oversight of community school sponsors, provide technical assistance to community schools and, under certain circumstances, suspend the operation of a community school<sup>77</sup>
- Investigate complaints filed in reference to the transportation of nonresident pupils under certain conditions<sup>78</sup>
- Order the dissolution of school districts not maintaining grades kindergarten through twelve, the merger of such districts with other

<sup>&</sup>lt;sup>69</sup> 3301.0717

 $<sup>^{70}</sup>$  3313.56; 3321.09

<sup>&</sup>lt;sup>71</sup> 3301.0720

<sup>&</sup>lt;sup>72</sup> 3301.07(M)

<sup>&</sup>lt;sup>73</sup> 3301.079

<sup>&</sup>lt;sup>74</sup> Section 3 of Am. Sub. S.B.1 (124<sup>th</sup> General Assembly) (2001).

<sup>&</sup>lt;sup>75</sup> 3301.07(L)

<sup>&</sup>lt;sup>76</sup> 3301.16

<sup>&</sup>lt;sup>77</sup> <u>3314.015</u>; <u>3314.02</u>; <u>3314.072</u>

<sup>&</sup>lt;sup>78</sup> 3327.05

districts if the surrounding districts are unable to reach a voluntary agreement, and authorize exceptions to school districts where topography, scarcity of population, and other factors make compliance impracticable<sup>79</sup>

# Professional Conduct

- Revoke for cause teachers' licenses, and prescribe and furnish forms to clerks of courts in the state by which the courts of the state may promptly notify the State Board of Education of the conviction of any person holding a valid teaching license of a felony, offense of violence, or any offense involving theft or drug abuse<sup>80</sup>
- Investigate and conduct hearings with respect to the suspension and revocation of teaching licenses,<sup>81</sup> and enforce orders relating to the revocation of teaching licenses for failure of the holder to pay child support<sup>82</sup>

#### Territory Transfers

- Determine whether a portion of the territory of a school district included within territory annexed to a municipal corporation shall become part of a city school district or the school district of which a village is a part<sup>83</sup>
- Approve or disapprove transfer of territory from one or more local school districts to an adjoining local school district or districts within an educational service center,<sup>84</sup> and approve (or disapprove) annexation of a local school district to an adjacent educational service center<sup>85</sup>
- Pursuant to <u>ORC § 3311.24</u>, approve or disapprove transfer of territory from an exempted village or city school district and, pursuant to <u>ORC §§ 3311.26</u>, <u>3311.37</u>, and <u>3311.38</u>, propose consolidation of school districts, the transfer of school district territory, or the creation of a new local school district

<sup>&</sup>lt;sup>79</sup> 3311.29

<sup>&</sup>lt;sup>80</sup>3319.31; 3319.52(B)

<sup>&</sup>lt;sup>81</sup> 3319.31; 3319.311

<sup>&</sup>lt;sup>82</sup> 3319.312

<sup>83 3311.06</sup> 

<sup>&</sup>lt;sup>84</sup> 3311.22

<sup>85 3311.059</sup> 

# APPENDIX C

References to the Ohio Revised Code and Ohio Administrative Rules are found at the State Board Home page on the Ohio Department of Education website at <a href="https://www.ode.state.oh.us">www.ode.state.oh.us</a>; "Board Member Quick Links": Ohio Administrative and Revised Code.

# **Investigation of Complaints**

The Superintendent of Public Instruction may investigate complaints about school districts and educator conduct that allege a violation of federal or state law, federal regulations or state rules; and take appropriate action in assuring school district compliance with applicable laws, rules, and regulations.

The Superintendent shall not be required to investigate complaints about school districts or educator conduct which come within the purview of the duties and responsibilities of locally elected boards of education provided there is no allegation of a violation of federal or state law, and federal regulations or state rules.

All complaints regarding school districts and educator conduct must be filed with the Superintendent of Public Instruction or his/her designee. (An educator is any individual holding or seeking to hold a license, certificate or permit issued by the State Board of Education). In accordance with state law, complaints regarding educator conduct shall remain confidential and be excluded from the public record.

# **Investigation and Review of Complaints of Educator Misconduct**

The Superintendent, or his/her designee, will review all complaints to determine whether they reasonably appear to be the basis for action under ORC §3319.31 or §3319.15 and §3319.151.

If a complaint does not reasonably appear to present a violation of ORC §3319.31 or §3319.15 and §3319.151, the Superintendent will not initiate an investigation.

If a complaint reasonably appears to present a violation of ORC §3319.31 or §3319.15 and §3319.151, the Superintendent, or his/her designee, will direct the complaint to the appropriate investigative staff.

If sufficient evidence exists to warrant an action pursuant to ORC §3319.31 or §3319.15 and §3319.151 of the Revised Code, the State Board of Education delegates authority through Ohio Administrative Rule 3301-73-02 and this policy to the Superintendent, or his/her designee, to initiate proceedings under Chapter 119 of the Ohio Revised Code.

The Superintendent's authority extends to notifying the teacher that an investigation has been completed and, based upon that investigation, the results warrant initiating an action for the State Board to limit, suspend, revoke or deny licensure pursuant to ORC §3319.31 or §3319.15 and §3319.151.

The Superintendent shall notify the teacher of rights under Chapter 119 of the ORC including the right to a hearing and right to be represented by counsel.

# **Procedure for Presenting Personnel Matters to the State Board of Education**

A personnel matter shall be presented to the State Board upon the recommendation of the Superintendent of Public Instruction.

If an administrative hearing was held in accordance with Chapter 119, of the ORC, the administrative record presented to the State Board shall consist of the Report and Recommendation of the hearing officer who presided over the administrative hearing, any timely filed objections to the Report and Recommendation, and any other relevant records or materials which will assist the State Board in making a final determination regarding the personnel matter.

The Superintendent's recommendation to the State Board shall be the recommendation of the hearing officer.

The Superintendent, or his/her designee, may return a Report and Recommendation to a hearing officer to correct typographical errors, make technical changes or review clear misapplications of state laws or rules. The Superintendent, or his/her designee, shall not return a Report and Recommendation to a hearing officer due to disagreement with the hearing officer's recommendation regarding a personnel matter.

Pursuant to Rule 3301-73-05(C) of the Ohio Administrative Code, the State Board may take action on a personnel matter without an administrative hearing being held if an educator, properly notified of his/her right to an administrative hearing, fails to request a hearing in accordance with Chapter 119 of the ORC.

Given there will be no Report and Recommendation from a hearing officer, the administrative record presented to the State Board shall consist of an affidavit from an administrator in the Office of Professional Conduct regarding the personnel matter, certified court documents, and any other relevant records or materials which will assist the State Board in making a final determination regarding the personnel matter.

The Superintendent's recommendation to the State Board shall be based on the facts contained in the administrative record presented to the State Board and all applicable laws and rules. The Superintendent's recommendation may consider the State Board's prior resolutions in similar personnel matters.

A personnel matter shall not be presented to the State Board without an administrative hearing if the only basis for action is pursuant to section 3319.31(B) (1) of the ORC.

In accordance with Rule 3301-73-22(B), the State Board may accept a voluntary surrender or voluntary denial of a license in a personnel matter.

The administrative record presented to the State Board shall consist of a properly executed voluntary surrender or voluntary denial form and any other relevant records or materials which will assist the State Board in making a final determination regarding the personnel matter.

The Superintendent's recommendation to the State Board shall be consistent with the language of the voluntary surrender or voluntary denial form.

A resolution regarding a voluntary surrender or voluntary denial shall be eligible for inclusion on the State Board's Consent Agenda. However, such a resolution may be removed from the Consent Agenda in accordance with other applicable State Board policies.

If the State Board accepts a voluntary surrender or voluntary denial of a license, the State Board's action constitutes a disciplinary action and the voluntary surrender or voluntary denial is not considered a relinquishment of a license as provided for in Rule 3301-24-13 of the Ohio Administrative Code.

The State Board, upon review of the administrative record provided by the State Superintendent, may approve, modify, or reject the recommendation of the Superintendent regarding a personnel matter.

If the State Board modifies or rejects the Superintendent's recommendation, the reasons for such modification or rejection shall be included in the final State Board resolution.

There shall be no public participation before the State Board concerning personnel matters. The State Board's review of a personnel matter shall be limited to the administrative record provided by the State Superintendent and any review of the case file.

Any action taken by the State Board under this policy and pursuant to section 3319.31 of the Ohio Revised Code, is a disciplinary action and shall be reported to the National Association of State Directors of Teacher Education and Certification's (NASDTEC) Clearinghouse and may be reported, based on the discretion of the Superintendent or his/her designee, to other entities charged with law enforcement responsibilities or duties to prevent educator misconduct.

#### **Media Contacts and Personnel Matters**

If a State Board member is contacted by the media regarding a personnel matter, it is advised that the State Board member contact the Department of Education's Office of Public Affairs or the Office of Professional Conduct.

# **Compliance with State Laws and Rules in Personnel Matters**

If any action is initiated pursuant to section 3319.31 of the ORC, the State Superintendent of Public Instruction, or his/her designee, shall comply with applicable state laws and rules, including but not limited to Chapter 119 of the ORC, sections 3319.31 and 3319.311 of the ORC, Chapter 3301-73 of the Ohio Administrative Code and any other rules or policies promulgated by the State Board.

# **Ex-parte Communications in Personnel Matters**

As public servants, a State Board member may be contacted on occasion by individuals, including educators or alleged victims, regarding personnel matters. In its role regarding personnel matters, the State Board acts in a quasi-judicial manner; thus, ex-parte communication should be avoided if possible.

If ex-parte communication occurs regarding a personnel matter, the State Board member involved is advised to review the State Board's policy on recusal and decide if he/she should recuse himself from voting on the personnel matter.

#### Recusal of State Board Members in Personnel Matters

Each State Board member shall decide whether it is in the best interest of the Board and any parties involved in a teacher personnel matter to recuse himself from voting on a personnel matter. Possible reasons for recusal may be a personal relationship with the teacher or alleged victim, a business relationship with the teacher or alleged victim, or substantive discussions with the teacher, alleged victims or other community members which impact a State Board member's impartiality in deciding a personnel matter.

# APPENDIX D

References to the Ohio Revised Code and Ohio Administrative Rules are found at the State Board Home page on the Ohio Department of Education website at <a href="https://www.ode.state.oh.us">www.ode.state.oh.us</a>; "Board Member Quick Links": Ohio Administrative and Revised Code.

# I. Quasi-Judicial Role Generally

When the State Board of Education (SBOE) issues a final "adjudication" that determines the rights or duties of adverse parties, and the SBOE has provided notice, a hearing and the opportunity to present evidence, the SBOE has acted in a quasi-judicial capacity. *See Union Title Co. v. State. Bd. of Educ.*, 51 Ohio St.3d 189 (1990); *Rossford Exempted Village School Dist. v. State Bd. of Educ.* 45 Ohio St.3d 356 (1989); *State, ex rel. Bratenahl Local School Dist. Bd. of Educ. v. State Bd. of Educ.*, 53 Ohio St.2d 173 (1978). Pursuant to Ohio Revised Code (ORC) §119.12 and Section 4(B), Article IV of the Ohio Constitution, a party adversely affected by such final decisions of the SBOE may appeal to the court of common pleas. *See Union Title*, 51 Ohio St.3d at 194-195; *Rossford*, 45 Ohio St.3d at 654-655; *State, ex rel. Bratenahl*, 53 Ohio St.2d at 176.

The law is clear that the SBOE decisions are to be made solely on the record of the hearing, the report of the referee and any objections or responses filed by the parties.<sup>87</sup> Therefore, with regard to matters that are the subject of a Chapter 119 administrative hearing, or where a SBOE decision would otherwise meet the definition of an adjudication, it has long been the policy of the Board

ORC §119.01(D) defines an "adjudication" as:

<sup>[</sup>T]he determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person, but does not include the issuance of a license in response to an application with respect to which no question is raised, nor other acts of a ministerial nature.

Ohio Administrative Code Rule 3301-89-02 (Territory transfer rules)

that individuals or their attorneys are not permitted to address the Board, either in the context of a public meeting or otherwise. If a Board member is contacted by an interested party, he or she should respectfully decline to comment. Likewise, if a Board member receives any written correspondence, he or she should not read it but rather forward it to the ODE legal office.

# **II.** Quasi-Judicial Functions of the SBOE

A review of Ohio authorities indicates that, when the SBOE takes the following actions, it assumes a quasi-judicial role:

- Revocation of a district or school charter: Pursuant to ORC §3301.16,<sup>88</sup> the SBOE shall revoke the charter of any school district or school that fails to meet the elementary or high school standards prescribed by the SBOE. In addition, the SBOE shall revoke the charter of any nonpublic school that does not comply with proficiency test requirements. ORC. §3301.16 expressly mandates that the SBOE comply with the notice and hearing requirements of ORC Chapter 119.
- School Personnel Licensure determinations: Pursuant to ORC §§3319.31(B)<sup>89</sup> and (C),<sup>90</sup> the SBOE may refuse to issue a teacher's license to

Pursuant to standards prescribed by the state board of education as provided in division (D) of section 3301.07 of the Revised Code, the state board shall classify and charter school districts and individual schools within each district except that no charter shall be granted to a nonpublic school unless pursuant to division (K) of section 3301.0711 [3301.07.11] of the Revised Code the school elects to administer the tests prescribed by division (B) of section 3301.0710 [3301.07.10] of the Revised Code beginning July 1, 1995. The state board shall revoke the charter of any school district or school which fails to meet the standards for elementary and high schools as prescribed by the board. The state board shall also revoke the charter of any nonpublic school, that does not comply with section 3313.612 [3313.61.2] of the Revised Code or, on or after July 1, 1995, does not participate in the testing program prescribed by division (B) of section 3301.0710 [3301.07.10] of the Revised Code. In the issuance and revocation of school district or school charters, the state board shall be governed by the provisions of Chapter 119. of the Revised Code.

For any of the following reasons, the state board of education, in accordance with Chapter 119. and section 3319.311 [3319.31.1] of the Revised Code, may refuse to issue a license to an applicant, may limit a license it issues to an applicant, or may suspend, revoke, or limit a license that has been issued to any person: (1) Engaging in an immoral act, incompetence, negligence, or conduct that is unbecoming to the applicant's or person's position; (2) A plea of guilty to, a finding of guilt by a jury or court of, or a conviction of any of the following: (a) A felony; (b) A violation of section 2907.04 or 2907.06 or division (A) or (B) of section 2907.07 of the Revised Code; (c) An offense of violence; (d) A theft offense, as defined in section 2913.01 of the Revised Code; (e) A drug abuse offense, as defined in section 2925.01 of the Revised Code, that is not a minor misdemeanor; (f) A violation of an ordinance of a municipal corporation that is substantively comparable to an offense listed in divisions (B)(2)(a) to (e) of this section.

<sup>88</sup> ORC. §3301.16 provides:

<sup>&</sup>lt;sup>89</sup> ORC. §3319.311(B) provides:

an applicant, or limit, suspend or revoke a license. ORC. §3319.311 sets forth the notice and hearing requirements applicable to the SBOE determinations regarding licensure.

- Payment in lieu of transportation determinations: Pursuant to ORC §3327.02(E)(1),<sup>91</sup> if the department of education cannot resolve through mediation a dispute regarding the impracticality of transporting a student and an offer of payment in lieu of providing transportation, the SBOE shall conduct a hearing in accordance with ORC. Chapter 119 to decide the issue.
- **Approval of a municipal annexation of school territory:** Pursuant to ORC §3311.06(C), 92 when a portion of district territory is annexed by an adjoining city or village for municipal purposes, the SBOE must approve the incorporation of the annexed district territory into the adjoining city or village district territory. OAC §3301-89-01 *et seq.* sets forth the notice and hearing procedures applicable to this provision.
- Transfer of city, village or local district territory to adjoining city, village or local district initiated by local board or resident petition: Pursuant to ORC §3311.24, 93 the SBOE must approve or disapprove a request for a

- (a) Upon the request of a parent, guardian, or other person in charge of the pupil who rejected the payment in lieu of transportation, the department shall conduct mediation procedures.
- (b) If the mediation does not resolve the dispute, the state board of education shall conduct a hearing in accordance with Chapter 119. of the Revised Code. The state board may approve the payment in lieu of transportation or may order the board of education to provide transportation. The decision of the state board is binding in subsequent years and on future parties in interest provided the facts of the determination remain comparable.

....(2) When the territory so annexed to a city or village comprises part but not all of the territory of a school district, the said territory becomes part of the city school district or the school district of which the village is a part only upon approval by the state board of education, unless the district in which the territory is located is a party to an annexation agreement with the city school district.

(A) Except as provided in division (B) of this section, if the board of education of a city, exempted village, or local school district deems it advisable to transfer territory from such district to an adjoining city, exempted village, or local school district, or if a petition, signed by seventy-five per cent of the qualified electors residing within that portion of a city, exempted village, or local school district proposed to be transferred voting at the last general election, requests such a transfer, the board of education of the district in which such proposal originates shall file such proposal, together with a map showing the boundaries of the territory proposed to be transferred, with the state board of education prior to the first day of April in any even-numbered year. The state board of education may, if it is advisable, provide for a hearing in any suitable place in any of the school districts affected by such proposed transfer of territory. The state board of education or its representatives shall preside at any such hearing .... Not later than the first day of September the

<sup>&</sup>lt;sup>90</sup> ORC §3319.311(C) provides: "The state board may take action under division (B) of this section on the basis of substantially comparable conduct occurring in a jurisdiction outside this state or occurring before a person applies for or receives any license."

<sup>&</sup>lt;sup>91</sup> ORC. §3327.02(E)(1) provides:

<sup>&</sup>lt;sup>92</sup> ORC. §3311.06(C), in part, provides:

<sup>&</sup>lt;sup>93</sup> ORC.§3311.24, in part, provides:

territory transfer emanating from either a local board or a petition from residents of the territory proposed to be transferred. OAC §3301-89-01 *et seq.* sets forth the notice and hearing procedures applicable to this provision.

- Community school sponsorship disapprovals and revocations: Pursuant to ORC §3314.015 the decision to disapprove an entity for sponsorship of a community school or to revoke approval for such sponsorship is subject to the provisions of ORC Chapter 119.
- The SBOE quasi-judicial role could potentially apply to any other matter where a hearing is offered and adjudication is made by the SBOE, even if such hearing is not required by law.

state board of education shall either approve or disapprove a proposed transfer of territory filed with it as provided by this section.

#### **APPENDIX E**

References to the Ohio Revised Code and Ohio Administrative Rules are found at the State Board Home page on the Ohio Department of Education website at <a href="https://www.ode.state.oh.us">www.ode.state.oh.us</a>; "Board Member Quick Links": Ohio Administrative and Revised Code.

# **ODE Rule Process**

#### Overview

The State Board of Education (SBOE) adopts rules concerning public education in Ohio. As a result, the process of changing (amending), eliminating (rescinding) and adopting new rules differs somewhat than that of other rule-making entities in Ohio, which may not have a governing board with rule-making authority.

#### Rule Review

By law, all of the Ohio Department of Education's (ODE) administrative rules must be reviewed at least once every five years. Reviewing a rule entails filing it with the Joint Committee on Agency Rule Review (JCARR), the Legislative Service Commission (LSC) and the Secretary of State.

In reviewing a rule, ODE provides an analysis of the rule's content and one of the following recommendations to the SBOE:

The rule under review requires:

- Amendment (Changes):
- Rescission (Elimination); or
- No change (No Change).

In addition to the five-year review process, changes in state law occasionally require ODE to write new rules.

#### Rule Process

In all cases (New, Amendments, Rescissions and rules requiring No Change), ODE must file rules with the Joint Committee on Agency Rule Review (JCARR), the oversight committee tasked with reviewing rules on behalf of the Ohio General Assembly. Go to JCARR for more information on the JCARR process.

ODE follows the same process for filing rules with JCARR as any other state agency. *However*, there are three additional steps for SBOE's rule-making process, including:

- Review by a committee of SBOE, which makes a recommendation to the full SBOE to change, eliminate or create a new rule (occurs prior to filing rules with JCARR);
- Adoption by the SBOE through a Resolution of Intent to change, eliminate or create a new rule (must occur before filing the rule with JCARR); and
- Adoption by the SBOE of a Resolution to Adopt to change, eliminate or create a new rule (occurs at least 66 days after the rule was filed with JCARR, one day beyond the length of JCARR's legislative jurisdiction over the rule).

#### Complete Process Combining JCARR and SBOE Requirements

The process of changing, eliminating or adopting rules at ODE includes the following steps:

- 1. Departmental/stakeholder review of changed, eliminated or proposed rule;
- 2. Review by SBOE committee and recommendation to the full SBOE;
- 3. Adoption of a Resolution of Intent by the full SBOE to change, eliminate or create a rule;
- 4. Original filing of the rule (along with notice of the public hearing) with JCARR, LSC and Secretary of State;
- 5. Revised Code Chapter 119 ("Public") Hearing held during the State Board meeting, 31 to 40 days following the date of filing;
- 6. Listing of rule appears on the agenda of the last JCARR meeting within 65 days after the original filing;
- 7. Adoption by full SBOE of a Resolution to Adopt the changed, eliminated or proposed rules; and
- 8. Final filing of rule with JCARR, LSC and Secretary of State and setting of the effective and next five-year-review dates.

## Access to Rules

This site provides access to the SBOE's rules including *existing rules and rules recently filed with JCARR*. For information regarding rules that may be in development in one of our offices, please contact the ODE Office of Legal Counsel.

**Existing administrative rules** can be accessed through Anderson's Web site at <a href="http://onlinedocs.andersonpublishing.com">http://onlinedocs.andersonpublishing.com</a> by completing the following three steps:

- From the homepage, click on Anderson's Administrative Code;
- Click on the option to view Chapter 3301 (Ohio Department of Education);
- Click on any rule within the roughly 70 chapters maintained by the SBOE.

#### Rules to be considered by the SBOE

For a list of rule actions to be considered by the SBOE at its next meeting along with public (rules) hearing information, please visit ODE's administrative rules site

(accessible from the menu at the Ohio Department of Education website: www.ode.state.oh.us). If you have questions concerning any of these rule actions or an upcoming public (rules) hearing, please contact ODE's Office of Legal Counsel.

Rules recently filed with JCARR are posted the day following the date of original filing to 365 days following the date of final filing by LSC on the Register of Ohio (www.registerofohio.state.oh.us). The Register of Ohio provides easy access to recently filed administrative rules and their accompanying public hearing notices. In order to make searching for a rule easy, the Register of Ohio allows visitors to search for the rule by filing agency (e.g. ODE), public hearing date and file date. A visitor may also search for a proposed and recently adopted rule by rule number, keyword in rule title, filing agency or public hearing date.

# To obtain copies of rules recently adopted by the SBOE that no longer appear on the Register of Ohio

It can take several months to a year (or longer) for Anderson's to update its Web site with recent rule changes. After 365 days from the date of final filing, recently filed rules are removed from the Register of Ohio. This means there could be a lapse of time before the public can access recent rules via the Internet. For a copy of an education rule that is not available online, please contact ODE's Office of Legal Counsel.

## APPENDIX F

References to the Ohio Revised Code and Ohio Administrative Rules are found at the State Board Home page on the Ohio Department of Education website at <a href="https://www.ode.state.oh.us">www.ode.state.oh.us</a>; "Board Member Quick Links": Ohio Administrative and Revised Code.

# **Student Transportation and Payment in Lieu of Transportation**

# **Generally**

Pursuant to Ohio Revised Code Section 3327.01, city, local, and exempted village school districts are required to transport students in grades kindergarten through eight who live more than two miles from their assigned school. Students in these grades who are attending State Board approved nonpublic or community schools are also entitled to transportation. City, local, and exempted village school districts may also provide transportation for resident students in grades nine through twelve. A district providing transportation for resident high school students who are attending its schools must also provide transportation to resident high school students who are attending State Board approved nonpublic or community schools.

A district board is not required to transport elementary or high school students to and from a nonpublic or community school when such transportation would require more than thirty minutes of direct travel time as measured by school bus from the public school building to which the pupils would otherwise be assigned.

#### Offers of Payment in Lieu of Transportation

Upon contact from a resident parent/guardian whose student is attending a State Board approved nonpublic or community school, a city, local, or exempted village school district may determine whether it is practical to provide transportation for that student. If the district board determines that it is impractical to transport the student, the district board may offer payment in lieu of transportation.

Pursuant to Ohio Revised Code Section 3327.02, the district board must consider the following factors when evaluating whether it is impractical to transport an eligible student:

- The time and distance required to provide the transportation
- The number of students to be transported
- The cost of providing transportation, including the cost of equipment, maintenance, personnel, and administration
- Whether similar or equivalent service is provided to other students eligible for transportation
- Whether and to what extent the additional service unavoidably disrupts current transportation schedules
- Whether other reimbursable types of transportation are available

Based upon these factors, the district board may pass a resolution declaring the impracticality of transportation. The resolution shall include each student's name and the reason for impracticality. The district board shall report its determination to the State Board.

The board of education of a local school district shall also submit the resolution to its educational service center. If the educational service center governing board considers transportation by school conveyance practicable, it shall inform the local board and transportation shall be provided by such local board. If the educational service center board agrees with the view of the local board, the local board may offer payment in lieu of transportation in accordance with the requirements of Ohio Revised Code Section 3327.02.

After passing a resolution declaring the impracticality of transportation, the district board shall offer payment in lieu of transportation in the manner specified by Ohio Revised Code Section 3327.02. The district board must inform the student's parent/guardian of the resolution as well as the right of the student's parent/guardian to either accept the offer or reject it and request that ODE initiate mediation procedures. In addition, the district board must issue the student's parent/guardian a contract or other form on which the parent /guardian is given the option to accept or reject the offer in lieu of transportation. The parent/guardian must acknowledge and return the contract or form to the public school indicating acceptance or rejection.

If the parent/guardian accepts the offer of payment in lieu of transportation, the district board will then verify attendance for the school identified and make payment to the parent/guardian at the end of the school year. The amount to be paid shall not be less than the amount determined by ODE as the minimum for payment in lieu of transportation, and not more than the amount determined by ODE as the average cost of student transportation for the previous school year. Payment may be prorated if the time period involved is only a part of the school year.

If the parent/guardian rejects the offer of payment in lieu of transportation and instead chooses to request mediation, then the parent/guardian must submit their request in writing to the district superintendent and to the ODE Area Coordinator's Office. The Area Coordinator shall then conduct mediation procedures. If mediation does not resolve the dispute, the State Board shall conduct a hearing in accordance with Chapter 119 of the Revised Code. The school district shall provide transportation for the student from the time the parent or guardian requests mediation until the matter is resolved.

Following a recommendation by the mediator and a Chapter 119 hearing, the State Board may approve the district's impracticality determination or may order the district board to provide transportation. The decision of the State Board is binding in subsequent years and on future parties in interest, provided that the facts of the determination remain comparable.

# **APPENDIX G**

References to the Ohio Revised Code and Ohio Administrative Rules are found at the State Board Home page on the Ohio Department of Education website at <a href="https://www.ode.state.oh.us">www.ode.state.oh.us</a>; "Board Member Quick Links": Ohio Administrative and Revised Code.

# Community Schools: The Role of the State Board of Education and the Department of Education

#### Introduction

Since 1997, the State of Ohio has supported the development of community schools as an alternative to the traditional public school system. Authorized in Chapter 3314 of the Ohio Revised Code, "community schools," which are also known as "charter schools," are public, nonprofit, nonsectarian schools that operate under a contract with a sponsoring entity but independently of any school district. Community schools often serve a limited number of grades or a particular purpose.

The Ohio General Assembly has stated that a community school "is a public school, independent of any school district, and is part of the state's program of education." Community schools are vested with broad powers, including the power to sue and be sued, acquire facilities, and contract for services as necessary for the operation of the school. The governing authority of a community school is further authorized to "carry out any act and ensure the performance of any function" that is not unconstitutional, unlawful, or in violation of the contract with the sponsor. 96

Community schools are exempt from all state laws and rules pertaining to schools, school districts, and boards of education except laws that grant certain rights to parents; laws specified in the sponsor contract; and laws specifically enumerated within Chapter 3314. Community schools are also subject to all federal laws that apply to schools and employers generally and to all constitutional constraints that apply to governmental bodies.

In 2003, the General Assembly strengthened the role of the Ohio Department of Education (ODE) with respect to oversight of community schools, requiring that all sponsors be approved by ODE and that the State Board of Education no longer serve as a sponsor of community schools. ODE was established as the granting authority for prospective community school sponsors and the provider of technical assistance to sponsors and schools.

<sup>&</sup>lt;sup>94</sup> ORC. § 3314.01(B).

<sup>&</sup>lt;sup>95</sup> *Id*.

<sup>&</sup>lt;sup>96</sup> Id.

<sup>&</sup>lt;sup>97</sup> ORC. § 3314.04.

<sup>98</sup> Sub. H.B. 364.

The Office of Community Schools was instituted within ODE to provide services that facilitate the management of the community schools program, including technical assistance and information provided to individuals or groups considering a proposal for a community school, governing authorities of existing community schools, and public entities who are sponsoring or considering the sponsorship of a community school. <sup>99</sup>

# Types of Community Schools

There are two types of community schools that may be created. "Conversion" community schools, which are created by converting all or part of an existing public school, may operate in any school district in the state. <sup>100</sup> A conversion school is sponsored by the board of education that owns the school that has been converted.

"Start-up" community schools, which do not involve the conversion of an existing public school, are new schools that may be sponsored only in "challenged" school districts. A "challenged" school district is defined as a district within the original pilot project area in Lucas County; a district in academic emergency or academic watch; or a "big eight" school district. 102

The entities that may sponsor a new start-up school are the board of education of the district in which the school will be located; the board of a joint vocational school district with territory in the county containing a majority of the territory of the district in which the school will be located; the board of education of any city, local, or exempted village district having territory in the county that contains a majority of the territory of the district in which the school will be located; the governing board of an educational service center; a sponsoring authority designated by any of the state universities, as long as the mission of the community school is related to the university's teacher preparation program; and a qualified tax-exempt entity under § 501(c)(3) of the Internal Revenue Code, that has been in operation for at least five years, has assets of at least \$500,000 and a demonstrated record of financial responsibility, has a demonstrated record of successful implementation of educational programs and is an "education-oriented entity" as determined by ODE, and is not a community school. <sup>103</sup>

A start-up community school must be under the direction of a governing authority consisting of at least five members. <sup>104</sup> The contract between the sponsor and the community school must be approved by a majority of both the sponsor's board and the school's governing authority, which must notify ODE when the contract has been signed. <sup>105</sup>

<sup>100</sup> ORC. § 3314.02(B).

<sup>&</sup>lt;sup>99</sup> ORC. § 3314.11.

<sup>&</sup>lt;sup>101</sup> ORC. § 3314.02(C).

<sup>&</sup>lt;sup>102</sup> ORC. § 3314.02(A)(3). "Big eight" districts are defined as districts that for fiscal year 1997 had a percentage of children residing in the district and receiving welfare benefits greater than thirty percent and an average daily membership greater than twelve thousand. ORC. § 3314.02(A)(4).

<sup>&</sup>lt;sup>103</sup> ORC. § 3314.02(C).

<sup>&</sup>lt;sup>104</sup> ORC. § 3314.02(E).

<sup>&</sup>lt;sup>105</sup> ORC. § 3314.02(D).

In 2003, the General Assembly established a sub-category of community school called the "internet- or computer-based community school," which is also known as the "eschool." The internet- or computer-based community school may be either a conversion school or a new start-up school. An "internet- or computer-based community school" is defined as a community school in which students "work primarily from their residences" on assignments provided "via an internet- or other computer-based instructional method that does not rely on regular classroom instruction." There may be a "mixed" delivery of services, meaning that instruction may be delivered through "comprehensive instructional methods that include internet-based, other computer-based, and non-computer-based learning opportunities." 108

# Oversight Responsibilities

ODE is responsible for the oversight of sponsors of community schools and must provide technical assistance to schools and sponsors in their compliance with applicable laws and the terms of their sponsor contracts and in their development and start-up activities. Specifically, ODE is required to do the following:

- Conduct training sessions and distribute informational materials, in providing technical assistance to proposing parties, governing authorities, and sponsors; 110
- Approve entities to be sponsors of community schools and monitor the
  effectiveness of those sponsors in their oversight of the schools with which they
  have contracted;<sup>111</sup>
- Enter into written agreements with sponsors regarding the manner in which the sponsors will conduct their sponsorship; 112
- Adopt rules containing criteria, procedures, and deadlines for processing applications for the approval of sponsors, for oversight of sponsors, for revocation of the approval of sponsors, and for entering into written agreements with sponsors; 113
- Notify an entity of the number of community schools that the entity may sponsor, upon approval of the entity to be a sponsor; 114
- Assist any community schools in excess of a sponsoring entity's limit in securing new sponsors, if the entity exceeds the number of schools that it may sponsor, and assume sponsorship of the schools if they are unable to secure new sponsors;<sup>115</sup>
- Determine whether the mission proposed to be specified in the contract of a community school to be sponsored by a state university board of trustees or the board's designee is related to the university's teacher preparation program; 116

<sup>106</sup> ORC. § 3314.02(A)(7).
107 Id.
108 Id.
109 ORC. § 3314.015(A).
110 ORC. § 3314.015(A)(1).
111 ORC. § 3314.015(A)(2).
112 ORC. § 3314.015(B)(1).
113 Id.
114 Id.
115 Id.
116 ORC. § 3314.015(B)(2).

- Determine if any tax-exempt entity under § 501(c)(3) of the Internal Revenue Code that is proposed to be a sponsor of a community school is an education-oriented entity; 117
- Adopt procedures for use by a community school's governing authority and sponsor when the school permanently closes and ceases operation, including procedures for data reporting to ODE, handling of student records, distribution of assets, and other matters related to ceasing operation of the school; 118
- Suspend the operation of any community school, if conditions at the school do not comply with applicable health and safety standards and the sponsor fails to take action.

If the state board of education finds that a sponsor is not in compliance or is no longer willing to comply with its contract with any community school or with ODE's rules for sponsorship, the state board or its designee must conduct a hearing. After the hearing, if the state board or its designee has confirmed the original finding, ODE may revoke the sponsor's approval to sponsor community schools and may assume the sponsorship of any schools with which the sponsor has contracted until the earlier of the expiration of two school years or until a new sponsor is secured by the school's governing authority. 121

# **Reporting Requirements**

The sponsor of each community school must report to ODE on the academic and fiscal performance and the organization and operation of the community school on at least an annual basis. Also, on or before the first day of November of each year, the sponsor must submit to ODE, in accordance with guidelines adopted by ODE, a report that describes the special education and related services provided by that school to enrolled students during the previous fiscal year and the school's expenditures for those services. 123

ODE, as part of its general oversight responsibility, must submit a report by the last day of December of each year to the Governor, Speaker of the House of Representatives, President of the Senate, and Chairpersons of the House and Senate Education Committees. The report must address community school operations, the effectiveness of academic programs, legal compliance, and the financial condition of Ohio's community schools. Additionally, ODE is required to issue periodic legislative recommendations to enhance the operation and performance of community schools.

<sup>122</sup> ORC. § 3314.03(D).

<sup>&</sup>lt;sup>117</sup> ORC. § 3314.015(B)(3). <sup>118</sup> ORC. § 3314.015(E).

<sup>&</sup>lt;sup>119</sup> ORC. § 3314.072(B).

<sup>&</sup>lt;sup>120</sup> ORC. § 3314.015(C).

<sup>&</sup>lt;sup>121</sup> *Id*.

<sup>&</sup>lt;sup>123</sup> ORC. § 3314.12.

<sup>&</sup>lt;sup>124</sup> ORC. § 3314.015(A)(3).

<sup>&</sup>lt;sup>125</sup> *Id*.

<sup>&</sup>lt;sup>126</sup> ORC. § 3314.015(A)(4).

# Report Cards

ODE is required to prepare and issue annually to each community school a report card that reflects the academic and financial performance of the school for the year in question. A report card is not issued for any community school that has been open for instruction for less than two full school years. 128

Report cards must be distributed to the parents of all community school students, the members of the board of education of the school district in which the community school is located, and any other person requesting the report card from ODE. 129

#### **Sponsor Contract**

The operation of a community school is governed by the terms of the contract with the sponsoring entity. The "sponsor contract," also known as the "charter," has many provisions that are mandated by law, as well as many provisions that have been negotiated by the parties. The sponsor contract both describes the specific characteristics and objectives of the community school and binds the community school to the minimum requirements imposed by law. A copy of every sponsor contract must be filed with the Superintendent of Public Instruction. <sup>131</sup>

There are many required elements of the sponsor contract, <sup>132</sup> including:

- A statement that the community school will be established as a public benefit corporation;
- The education program of the community school, the school's mission, the characteristics of the students that the school is expected to attract, the ages and grades of the students, and the focus of the curriculum;
- The academic goals to be achieved and the method of measurement that will be used to determine progress toward those goals, which must include the statewide achievement tests;
- Performance standards by which the success of the community school will be evaluated by the sponsor;
- The admission standards required by Chapter 3314;
- Dismissal procedures, including "automatic withdrawal" for 105 consecutive hours of nonparticipation without legitimate excuse;
- The ways by which the community school will achieve racial and ethnic balance reflective of the community that it serves;
- Requirements for financial audits by the auditor of state and the maintenance of financial records;
- The facilities to be used and their locations, and the method of acquisition <sup>133</sup>;
- Qualifications of teachers, including the requirement that classroom teachers be licensed;

<sup>&</sup>lt;sup>127</sup> ORC. § 3314.012(B).

<sup>&</sup>lt;sup>128</sup> ORC. § 3314.012(E).

<sup>&</sup>lt;sup>129</sup> ORC. § 3314.012(D).

<sup>&</sup>lt;sup>130</sup> ORC. § 3314.03.

<sup>131 7.1</sup> 

<sup>&</sup>lt;sup>132</sup> ORC. § 3314.03(A).

<sup>&</sup>lt;sup>133</sup> ORC. § 3314.05.

- A statement that the community school will provide learning opportunities to a minimum of twenty-five students for a minimum of 920 hours per school year;
- A statement that the governing authority will purchase liability insurance or otherwise provide for the potential liability of the community school;
- A statement that the community school will be nonsectarian in its programs, admission policies, employment practices, and all other operations, and will not be operated by a sectarian school or religious institution;
- A statement that the community school will comply with certain enumerated statutory provisions;
- A statement that the community school will comply with the ethics laws;
- A statement that the community school will comply with all legal requirements relating to the issuance of diplomas, except that successful completion of the school's curriculum, rather than "the curriculum in any high school," will be deemed sufficient for the award of a diploma;
- A statement that the community school's governing authority will submit an annual report to the sponsor and to the parents of all students enrolled in the community school within four months after the end of each school year;
- A statement that the community school (excluding internet- or computer-based community schools) will comply with the law pertaining to the display of the U.S. and Ohio mottoes;
- Arrangements for providing health and other benefits to employees;
- The length of the contract;
- The governing authority of the school;
- A financial plan detailing an estimated school budget for each year and specifying the total estimated per pupil expenditure amount for each year and the base formula amount that will be used for purposes of funding calculations;
- Requirements and procedures regarding the disposition of employees in the event the contract is terminated or not renewed;
- Whether the community school is to be a new start-up school or created by
  converting all or part of an existing public school (including specification of any
  duties or responsibilities of an employer that the board of education that operated
  the school before conversion is delegating to the governing board of the
  community school with respect to all or any specified group of employees
  provided the delegation is not prohibited by a collective bargaining agreement
  applicable to such employees);
- Procedures for resolving disputes or differences of opinion between the sponsor and the governing authority of the community school;
- A provision requiring the governing authority to adopt a policy regarding the admission of students who reside outside the district in which the school is located;
- Recognition of ODE's authority to take over sponsorship, if necessary;
- Recognition of the sponsor's authority to assume operations, if necessary;
- Recognition of the authority of public safety and health officials to inspect the facilities and close the school for noncompliance with applicable laws;
- Recognition of ODE's authority to suspend operations for health and safety reasons in the event of inaction by the sponsor;

- A description of the learning opportunities that will be offered to students including both classroom-based and non-classroom-based learning opportunities in compliance with criteria for student participation established by ODE;
- A statement that the community school will comply with ODE's system of intensive, ongoing support for the improvement of school districts and school buildings;
- A statement that the community school will open for operation not later than the last day of September of each school year (unless the mission of the school is solely to serve dropouts) and, in its initial year of operation, if the school fails to open by the last day of September (or within one year after the adoption of the contract if the mission of the school is solely to serve dropouts), that the contract will be void;
- The target ratio of the number of autistic students to the number of non-handicapped students in the community school's population, the total number of autistic students that may be enrolled in the school, and the total number of non-handicapped students that may be enrolled in the school (applies only to schools that are specifically limited to a specified number of autistic students and non-handicapped students). <sup>134</sup>

The contract between the sponsor and the community school must also specify the duties of the sponsor to monitor the community school's compliance with all laws applicable to the school and with the terms of the contract; monitor and evaluate the academic and fiscal performance and the organization and operation of the community school on at least an annual basis; report on an annual basis the results of this evaluation to ODE and to the parents of students enrolled in the community school; provide technical assistance to the community school in complying with laws applicable to the school and terms of the contract; take steps to intervene in the school's operation to correct problems in the school's overall performance, declare the school to be on probationary status, suspend the operation of the school, or terminate the contract of the school as determined necessary by the sponsor; and have in place a plan of action to be undertaken in the event the community school experiences financial difficulties or closes prior to the end of a school year. <sup>135</sup>

The contract may provide for payments, not to exceed three per cent of the total amount of payments for operating expenses that the community school receives from the state, to be made by the governing authority to the sponsor. <sup>136</sup>

In addition to the sponsor contract, the community school must also submit to the sponsor a comprehensive plan for the school. The plan must address the process by which the governing authority of the community school will be selected in the future; the management and administration of the school; alternative arrangements for students and teachers who do not wish to participate in a new conversion school; the instructional program and educational philosophy of the school; and internal financial controls.

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<sup>&</sup>lt;sup>134</sup> ORC. § 3314.061.

<sup>&</sup>lt;sup>135</sup> ORC. § 3314.03(D).

<sup>&</sup>lt;sup>136</sup> ORC. § 3314.03(C).

<sup>&</sup>lt;sup>137</sup> ORC. § 3314.03(B).

# **APPENDIX H**

References to the Ohio Revised Code and Ohio Administrative Rules are found at the State Board Home page on the Ohio Department of Education website at <a href="https://www.ode.state.oh.us">www.ode.state.oh.us</a>; "Board Member Quick Links": Ohio Administrative and Revised Code.

# LAND TRANSFERS

#### Statutory and Rule Guidance

This memo provides a broad overview of school district territory transfers in Ohio. The Ohio Revised Code provides for the following types of school district territory transfers:

- 1. Transfer of all or part of a local school district to an adjoining district(s) within the same Educational Service Center (hereinafter referred to as ESC). Can be initiated by ESC board resolution or a petition signed by qualified electors residing in the affected area. The required number of signatures is at least 55% of the number of qualified electors living in the area who voted in the last general election. (ORC Section 3311.22)
- 2. Transfer of all or part of a local school district to an adjoining ESC or to an adjoining city or exempted village school district. Can be initiated by ESC board resolution or a petition signed by qualified electors residing in the affected area. The required number of signatures is at least 55% of the number of qualified electors living in the area who voted in the last general election. (ORC Section 3311.231)
- 3. Transfer of a local school district from its current ESC to an adjacent ESC by local board resolution. (This process can be used in lieu of the transfer process described in paragraph 2, above.) The transfer must be approved by the ESC board which would gain territory and the State Board of Education. The issue can be subject to a referendum vote, if 20% of qualified voters in the district sign a duly filed petition. The petition must be filed with the county board of elections within 60 days of the adoption of the initial local board resolution which proposed the transfer. (ORC Section 3311.059)
- 4. Creation of a new local school district from one or more local school districts, or parts thereof, by the State Board of Education. The issue can be subject to a referendum vote if 35% of qualified voters in the proposed new district area sign a duly filed petition. The petition must be filed with the State Superintendent within thirty days of the Board's adoption of a resolution proposing the creation of the new district. (ORC Section 3311.26)
- 5. Transfer of territory from a city, exempted village or local school district to an

- adjoining city, exempted village or local district initiated by board action of the district seeking to transfer territory from its district. The district in which the proposal originates must file a copy of the proposal and a map with the State Board prior to April 1 in any even-numbered year. (ORC Section 3311.24)
- 6. Transfer of territory from a city, exempted village or local school district to an adjoining city, exempted village or local school district initiated by a petition signed by at least 75% of the qualified electors residing in that portion of the district proposed to be moved and who actually voted in the last general election. The district in which the proposal originates must file a copy of the proposal and a map with the State Board prior to April 1 in any even-numbered year. A board of education receiving the petition must request the board of elections to check the sufficiency of signatures on the petition. (ORC Section 3311.24)
- 7. Creation of a new school district by proposal initiated by the State Board of Education.

(ORC Section 3311.37)

- 8. Transfer of school district territory by proposal initiated by the State Board of Education. (ORC Section 3311.38)
- 9. Transfer of school district territory in conjunction with a municipal annexation, either by action of the State Board of Education or agreement between the affected districts. (ORC Section 3311.06)
- 10. In counties with a population less than 100,000 by the most recent federal decennial census, two or more school districts may be merged. Ten percent of the qualified voters in each district must sign a petition bearing the names of five commissioners from that district to study the possibility of a merger. If the commission agrees on a merger proposal, and a majority of a district's commissioners approve the proposal, it will be placed on the ballot in that district. (ORC Section 3311.25)

Ohio Administrative Code Rule 3301-89-02(B): Procedures of the state board of education in a request for transfer of territory under section 3311.06 or 3311.24 of the Ohio Revised Code.

The seventeen questions are:

- (1) Why is the request being made?
- (2) Are there racial isolation implications?
  - (a) What is the percentage of minority students in the relinquishing district?
  - (b) What is the percentage of minority students in the acquiring district?
  - (c) If approved, would the transfer result in an increase in the percentage of minority pupils in the relinquishing district?
- (3) What long-range educational planning for the students in the districts affected has taken place?
- (4) Will the acquiring district have the fiscal and human resources to efficiently operate an expanded educational program?

- (5) Will the acquiring district have adequate facilities to accommodate the additional enrollment?
- (6) Will both the districts involved have pupil population and property valuation sufficient to maintain high school centers?
- (7) Will the proposed transfer of territory contribute to good district organization for the acquiring district?
- (8) Does the acquiring district have the capacity to assume any financial obligation that might accompany the relinquished territory?
- (9) Will the loss of either pupils or valuation be detrimental to the fiscal or educational operation of the relinquishing school district?
- (10) Have previous transfers caused substantive harm to the relinquishing district?
- (11) Is the property wealth in the affected area such that the motivation for the request could be considered a tax grab?
- (12) Are there any school buildings in the area proposed for transfer?
- (13) What are the distances between the school buildings in:
  - (a) The present area?
  - (b) The proposed area?
- (14) If approved, will the requested transfer create a school district with noncontiguous territory?
- (15) Is the area being requested an isolated segment of the district of which it is a part?
- (16) Will the municipal and school district boundary lines become coterminous?
- (17) For both the districts:
  - (a) What is the inside millage?
  - (b) What is the outside operating millage?
  - (c) What is the bonded indebtedness millage?

# Ohio Administrative Code Rule 3301-89-03(B) Factors to be considered by a referee appointed to hear a request for a transfer of territory under section 3311.06 or 3311.24 of the Ohio Revised Code.

- (B) Other factors that a referee shall consider in hearing any request for a transfer of territory for school purposes include, but are not necessarily limited to:
- (1) Documented agreements made by public agencies involved in municipal annexation proceedings should be honored;
- (2) A previous agreement entered into by the school districts concerned should be honored unless all concerned districts agree to amend it;
- (3) The statement signed by the school district boards of education after negotiations as required by paragraph (D)(4) of Rule 3301-89-04 of the Administrative Code;
- (4) There should not be undue delay in requesting a transfer for school purposes after a territory has been annexed for municipal purposes;
- (5) The transfer shall not cause, preserve, or increase racial isolation;
- (6) All school district territories should be contiguous unless otherwise authorized by law;
- (7) School district boundary lines that have existed for a long period of time should not be changed if substantial upheaval results because of long-held loyalties by the parties involved;
- (8) The pupil loss of the relinquishing district should not be such that the educational program of that district is severely impaired;

- (9) The fiscal resources acquired should be commensurate with the educational responsibilities assumed; and
- (10) The educational facilities of districts should be effectively utilized.

#### Ohio Administrative Code Rule 3301-89-03(C)

When ... the evidence is in balance, the hearing officer may consider the preference of the residents with school-age children who live in the territory sought to be transferred to another school district. The school district preference of such residents with school-age children in the territory requested for transfer may only be considered and given weight when all other factors are equal.

#### Ohio Administrative Code Rule 3301-89-01(F)

A request for transfer of territory will be considered upon its merit with primary consideration given to the present and ultimate good of the pupils concerned.

# Ohio Administrative Code Rule 3301-89-02(I) the State Board's Obligation

After the time for filing objections and responses has ended, the state board of education will then consider the referee's report, objections, and responses, and adopt a resolution which approves, disapproves, or modifies the recommendation of the referee. The decision of the state board of education will be made solely on the record of the hearing, the report of the referee and any objections or responses filed by the parties. (Emphasis added.)

# **Legal Commentary**

Most transfers are brought under ORC Sections 3311.24 and 3311.06. The parties proposing the transfer have the burden of proof at the hearing before the referee. Robert E. Levey, et al. v. State Board of Educ., 1995 Ohio App. LEXIS 765; John W. Samson, et al. v. State Board of Educ., 1998 Ohio App. LEXIS 3750. The burden of proof means the petitioners must present their case first and must establish facts by evidence which support a recommendation to transfer the property in question. Of course the respondents can rebut that evidence via cross-examination and the presentation of their own case following the petitioners' presentation.

The referee must consider the answers to the 17 questions and the 10 factors in reaching a recommendation. The state board is not bound by the recommendation of the referee. If the board agrees with the referee and adopts his/her report, it does not have to list all relevant factors that led to its decision in its resolution. <u>Fairborn City School Dist. v.</u> <u>State of Ohio, Bd. of Educ.</u>, 1996 Ohio App. LEXIS 4659. However, if the board rejects the referee's recommendation it must identify the basis of its decision. A reviewing court will then limit its inquiry to determining whether the stated reasons are supported by the evidence produced at the hearing and whether such reasons are in accordance with law.

<u>Joanne M. Schreiner, et al. v. State of Ohio, Dept. of Educ., at al.</u>, 99-LW-4725 (10<sup>th</sup> Dist. Ct. App. 1999).

As the above would suggest, the board's decisions in land transfer matters brought pursuant to ORC3311.06 can be appealed to the Court of Common Pleas in Franklin County. Union Title Co. v. State Board of Educ., 51 Ohio St. 3d. 189 (1990). Similarly, the board's decisions in ORC. 3311.24 matters can also be appealed to the Court of Common Pleas in Franklin County. Rossford Exempted Village School District v. State Board of Educ., 45 Ohio St. 3d 356 (1992). The standard of review utilized by the reviewing court is whether the board's decision is supported by reliable, probative, and substantial evidence and is in accordance with law. If so, the common pleas court will affirm the board's decision. Of course, the common pleas court decision can be appealed to the 10th District Court of Appeals in Franklin County. The appellate court's role is more limited than the lower court's. Its standard of review is whether the lower court abused its discretion. Abuse of discretion connotes more than an error of judgment; it's a decision that is arbitrary or capricious, one that is without a reasonable basis or clearly wrong. However, appeals courts do have complete authority to review the board's decision to determine whether it is in compliance with law. Schreiner.

Given the "present and ultimate good of the pupils" provision in Rule 3301-89-01(F), no one of the 10 factors in 3301-89-03 can be determinative of a land transfer request. The many competing factors must be balanced to achieve what is in the best interests of the students concerned. "It is appropriate for the board to consider both the social and educational needs of all affected students, as well as the potential financial implications of a transfer." Garfield Hts. City School Dist. v. State Bd. of Educ., 62 Ohio App. 3d 308, 319, 323 (1990). Accord, Cincinnati School Dist. v. State Bd. of Educ., 113 Ohio App. 3d. 305 (1996). The 10 factors are not a form of veto; the board still must decide what is in the present and ultimate good of the pupils. Cincinnati. However, analysis of the enumerated factors is an integral part of determining what is in the best interest of the students concerned. Garfield Hts.; Schreiner. The "pupils" referred to in Rule 3301-89-01(F) are not limited to the students living in the area to be transferred. It also includes all students affected by the proposed transfer. The potential benefit a transfer would confer on pupils living in a particular area subject to transfer must be balanced against evidence of potential harm the transfer might inflict on other students in the effected districts. Garfield Hts. at 319; Schreiner.

It is the duty of the State Board of Education and not the courts to weigh the competing factors and determine whether the transfer is in the best interests of the students. Schreiner; Fairborn City; Garfield Hts. The common pleas court merely determines whether the evidence supports the board's decision.

The State Board of Education is entitled to consider all relevant factors and not just those set forth in Chapter 3301-89 of the Ohio Administrative Code when deciding a territory transfer case. <u>Fairborn City</u>. However, the factors considered must not be inconsistent with the purpose of the statute (ORC. Section 3311.24 or 3311.06). <u>Schreiner</u>.

Promoting a sense of community is a valid ground for seeking and granting a transfer. Schreiner; Garfield Hts.; Levey. If the state board wanted to consider tax equalization (e.g., transferring valuable commercial property from a wealthy district to a poor district) as a factor in deciding a transfer case, it has the discretion to do so. Fairborn City. However, maintaining existing boundaries of city school districts is not, by itself, a legitimate factor weighing against a transfer. Schreiner; Village of Country Hills v. Cincinnati City School District, et al.

If a district is claiming that the loss of pupils or valuation will harm the fiscal operation of the district (question 12), that district must present evidence demonstrating how specifically the loss of income will effect the district. Mere conclusory statements that any loss of pupils or property harms the district do not meet the burden of proof. <u>Amy Crowe v. State Board of Educ.</u>, 1999 Ohio App. LEXIS 4993; <u>Levey</u>.

The fact that a transfer would make the municipal boundaries and the city school district boundaries coterminous (question 16) does not require that the transfer be granted. Fairborn City.

When the revenue generated by property far exceeds the cost of educating students from the area, the state board may conclude that the proposed transfer is a "tax grab" (question 11) and deny the transfer. Fairborn City; Samson.

The state board of education has the discretion to determine whether a particular set of facts constitutes an undue delay in requesting a transfer following a municipal annexation (factor 4). The board could conclude that delays of one and three years were too long, especially when the transfer request came only after the property had been commercially developed. Fairborn City.

The requirement that school district territory be contiguous (R.C. 3311.06(B); question 14; factor 6) means being in actual contact, touching along a boundary or at a point. Garfield Hts.; In re Transfer of Territory from Streetsboro City School Dist., 1992 Ohio App. LEXIS 3072. The mere fact that school buses would cross through part of another district in transporting students if the transfer were permitted does not prove that the district would be noncontiguous. Streetsboro.

When an area is surrounded on three sides by another district and the fourth side has an active railroad crossing between the area and the district it currently belongs to, the area can be considered an isolated part of its current district (question 15). These facts support transfer of the area to the district that borders three sides of the area. Furthermore, the increased safety of pupils from not having to cross the railroad tracks to get to school also supports the decision to grant the transfer. <u>Levey</u>.

The desires of residents in the area to be transferred to increase opportunities for their children to participate with neighboring children in neighborhood schools, to improve safety of the children in getting to school, and to decrease distances traveled to school are legitimate motivations for requesting a transfer (question 1). <u>Levey</u>.

A developer's desire to transfer property to another district so that new homes would sell faster is not a motivation for requesting a transfer (question 1) which supports a recommendation to transfer the property. <u>Samson</u>.

The transferring district has no discretion to disapprove a transfer once the state board has acted to approve it. Rossford; State ex rel. Bell v. Cambridge Bd. of Educ., 45 Ohio St. 2d. 316 (1976); Streetsboro.

However, after a hearing and state board action to approve a transfer, the district that would otherwise receive the property has the discretion to reject the transfer. <u>Garfield</u> Hts. City School Dist. v. State Bd. of Educ., 71 Ohio St. 3d 590 (1995).

# STATE BOARD OF EDUCATION PROCEDURE FOR CONSIDERING REQUESTS PURSUANT TO OHIO REVISED CODE SECTION 3311.059

Pursuant to section 3311.059 of the Ohio Revised Code ("ORC") the board of education of a local school district may, by a resolution passed by the majority of all its members, propose to sever that local school district from the territory of the educational service center ("ESC") in which the local school district is currently included and to instead annex the local school district to the territory of another ESC ("Receiving ESC"), the current territory of which is adjacent to the territory of the ESC in which the local school district is currently included ("Current ESC").

Resolutions adopted pursuant to ORC section 3311.059(A) are <u>not</u> effective unless approved by the State Board of Education. ORC Section 3311.059(B) provides the following guidance for the State Board of Education in considering such requests:

"In deciding whether to approve the resolution, the State Board <u>shall</u> <u>consider</u> the impact of an annexation on both the school district and the educational service center to which the district is proposed to be annexed, including the ability of that service center to deliver services in a cost-effective and efficient manner." (Emphasis added)

# I. <u>Initial Filing of Request for State Board Consideration</u>

# A. <u>Initial Request</u>

No sooner than 61 days nor more than 90 days following the: (1) adoption of the resolution by a local district stating its desire to annex its territory from one ESC to an adjacent ESC; or (2) the board of election's certification of an unsuccessful referendum vote on the annexation, the local district requesting State Board of Education consideration must present the State Board with an initial request which includes the following:

- 1) A true copy of the resolution adopted by the local district board of education seeking the annexation to an adjoining ESC; and
- 2) A statement from the local district which provides the reason it is seeking the proposed annexation and provides a description of the deliberative process the local board of education used to arrive at the decision to pursue annexation (e.g., prior negotiations with the Current ESC, board considerations, etc.); and
- 3) An accurate map that shows the territory being annexed, the boundaries of the district's Current ESC, the boundaries of the Receiving ESC, the location of the local district's buildings and central office, as well as the offices of both ESCs involved; and

- 4) A copy of a resolution passed by the proposed Receiving ESC, which indicates either its support for the annexation or its lack thereof; and
- 5) A statement from the proposed Receiving ESC which provides evidence of the impact on its operations and its ability to deliver services in a cost-effective and efficient manner; and
- 6) A copy of the notice provided to the Current ESC and the Receiving ESC regarding the local district's intention to pursue an annexation under ORC section 3311.059; and
- 7) A statement that, in accordance with ORC section 3311.059(E), the local district has not switched its ESC affiliation via this, or a similar, process within the last five years; and
- 8) A notarized statement from the local district's treasurer that either no referendum petition has been filed on this annexation action or that the referendum vote was unsuccessful with a true copy of the board of election's certification of the referendum vote.

# **II.** State Board of Education Process

#### Direct Recommendation from State Board President

Upon receipt of the initial request that meets all of the above-mentioned criteria and any supplemental written information requested the State Board President **may** make a recommendation to the State Board of Education in accordance with State Board procedures.

#### Option to Appoint a Subcommittee

When the State Board receives an initial request that meets all of the above-mentioned criteria, the State Board President **may** refer the matter to a subcommittee of the State Board to consider whether or not the local board of education's resolution should be approved.

#### Notice of State Board Action

The State Board, through its counsel, will notify the local school district of the action taken relative to its request. This notice **may** include a request for supplemental written information, which should address the considerations outlined in sections II(A),(B), and (C) below, within a time certain. (If supplemental written information is requested, the notice will specify whether some or all of the considerations should be addressed.)

#### Option to Convene Fact-Finding Meeting

If a subcommittee is appointed, and upon the receipt of any supplemental written information requested, the subcommittee **may** preside over a fact-finding meeting wherein the local district requesting the proposal and the Receiving ESC may have an opportunity to present their positions. (The decision whether to convene a fact-finding

meeting is left to the sole discretion of the subcommittee.) This meeting is not a hearing, but an opportunity for the local district and the Receiving ESC to clarify their positions to the subcommittee and for the subcommittee to ask any questions they may have. If a meeting is held, the subcommittee may place reasonable time restrictions on the presentations. In lieu of holding a fact-finding meeting, the subcommittee **may** make a recommendation to the State Board based upon the initial request and any supplemental written information requested.

# Burden of Presenting/Providing Sufficient Information

The burden of presenting information to the State Board in support of the proposed annexation, pursuant to this procedure, lies with the local district requesting to be annexed. If the Receiving ESC wishes to submit additional written documentation, assist the local district with its written proposal, or take part in the above-mentioned meeting, it may do so.

#### **Parties**

In making its determination the State Board (and any committee or subcommittee of the State Board) will only accept written submissions and hear oral presentation from the local school district requesting the annexation and the Receiving ESC. (Written submissions and/or oral presentation from the Current ESC, local school districts within either the Current ESC or within the Receiving ESC, or any member(s) of the general public will not be permitted or considered as a part of this process.)

#### Issues for Consideration

In determining whether to approve a local district's resolution, passed pursuant to ORC section 3311.059(A), the State Board **may** consider supplemental written information and/or oral presentation which address some or all of the following issues:

#### A. Fiscal Considerations

- 1) Provide a comparison of the costs, quality, efficiency and nature of services provided by the Current ESC and those to be provided by the proposed Receiving ESC (to include the percentage of the value of the supervisory unit deduct, the ADM deduct and the ESC 3311.17 funding directed to services as chosen by the local district).
- 2) Based on the comparison referenced in II(A)(1), explain why an annexation to the Receiving ESC will be cost effective for the local district.
- 3) Explain whether the Receiving ESC is fiscally capable of providing comparable or superior services to the local district.
- 4) Explain whether the Receiving ESC has sufficient staffing and resources to initiate services prior to an increase in state subsidy.
- 5) Explain what citations and/or recommendations were contained in recent fiscal audits of the proposed Receiving ESC that might suggest caution in approving the annexation.
- 6) Explain how the addition of a new local district will affect the cost of Supervisory Units.

7) Explain the cost impact on any cooperative programs between/among current local districts within the Receiving ESC.

## B. <u>Geographical/Organizational Considerations</u>

- 1) Explain whether there is a reasonable proximity to the Receiving ESC and to other local districts within the Receiving ESC to allow quality services to be provided in a timely and effective manner.
- 2) If the proposal is approved, explain whether the local district's affiliation with the Receiving ESC will strengthen or detract from existing consortium arrangements.
- 3) Explain whether the addition of a new local district to the Receiving ESC service area will either adversely affect the local districts currently receiving services from the Receiving ESC, or strengthen the service region.
- 4) Explain whether the annexation will effect a change in the Receiving ESC's governing board composition.

# C. <u>Program Considerations</u>

- 1) Explain what evidence exists to show that the Receiving ESC is offering quality services to the local districts it currently serves (e.g., client satisfaction surveys, independent program audits, etcetera.).
- 2) Explain the Receiving ESC's capacity to provide basic services to the local district and whether the services available will be less than, equivalent, or superior to the services provided by the Current ESC.
- 3) Explain what opportunities exist for collaborating with the Receiving ESC to purchase services needed by the local school district.
- 4) Explain whether additional Receiving ESC staffing will be required to support services and programs for the new local.
- 5) Explain the Receiving ESC's capacity for employing and retaining sufficient staff for specialized services.
- 6) Explain whether affiliation with the Receiving ESC will strengthen and/or enhance opportunities for students of the local district requesting the annexation.
- 7) Explain whether the annexation, if approved, will decrease the opportunities for students within local districts currently being served by the Receiving ESC.
- 8) Provide the Receiving ESC's current student enrollment in the following cooperative programs:
  - (a) Low Incident Units
  - (b) High Incident Units
  - (c) Emotionally Disturbed / Multiple or Severely Handicapped
  - (d) Public Preschool Classes
  - (e) Special Needs Preschool
  - (f) Alternative School

## III. Final Determination of State Board

Once the local district has submitted its initial request, any supplemental written information requested, and a fact-finding meeting has been held (if applicable), the matter will be placed on the State Board of Education agenda for consideration in accordance with State Board procedures. Legal Counsel to the State Board will notify the local district requesting the annexation of the date its matter will appear on the State Board agenda. The State Board will adopt a resolution either approving or disapproving the annexation resolution passed by the local district's board of education and the local district will be notified of the State Board's action.

## STATE BOARD OF EDUCATION PROCEDURE FOR CONSIDERING REQUESTS PURSUANT TO OHIO REVISED CODE SECTIONS 3311.37 AND 3311.26

Section 3311.37 of the Ohio Revised Code ("ORC") authorizes the State Board of Education to conduct studies where there is evidence of need for consolidation of two or more contiguous local, exempted village, or city districts or parts of such districts. Any such study must consider the possibility of making improvements in school district organization, as well as the desires of the residents of the affected districts. The study would contain recommendations for State Board consideration and the State Board could adopt, modify, or reject those recommendations. One potential outcome of the study would be a proposal by the State Board to create a new school district from part or all of the territory of the districts involved.

Section 3311.26 of the ORC authorizes the State Board, by resolution adopted by majority vote of its full board membership, to propose the creation of a new local school district from one or more local school districts or parts thereof. This could include the creation of a local district with noncontiguous territory from one or more local school districts if one of those districts has entered into an agreement under section 3313.42 of the ORC.

Any requests made pursuant to either of these two statutes will be subject to the State Board adopted process described below. (Note, however, that the State Board of Education retains the prerogative to commence the statutory process under either section 3311.26 or 3311.37 of the ORC on its own initiative by adopting a suitable resolution. Such state board-initiated matters are not subject to the process described in this policy.) Further, the following principles will applied to all requests submitted pursuant to either statute: 1) evidence of "need" must be established before the State Board will conduct a study; 2) the present and ultimate good of all of the pupils concerned will be the Board's primary consideration; and

3) the desires of the residents affected will be considered, but will only be a determinative factor if all other factors are equal.

## I. Initial filing of request:

#### A. Written Proposal

Prior to considering any request pursuant to ORC sections 3311.26 or 3311.37, the individual(s) requesting State Board consideration must present the State Board with a proposal which includes the following:

- 1) A written explanation of what is being proposed, what statute is being applied, why it is the appropriate statute, what territory and school districts will be affected, and why the request is being made; and
- 2) Documentation of substantial local support for the proposal (This portion of the proposal should contain information such as a description of the group making the proposal [number of members, number of meetings held, attendance at meetings, etc.], petitions signed by residents of the

- affected region, local media editorials in favor of the proposal, local groups' endorsements, etc.);
- 3) An accurate map which shows the present school district boundaries of the territories affected by the proposal; and
- 4) An accurate map which shows where the school district boundaries of the new district and each affected district would lie if the State Board were to create a new district.

#### B. Notice to Affected Parties

A copy of the proposal shall also be sent to each school district and ESC that may be affected by the proposal.

## II. Establishing the Need for a Study:

If the State Board receives a proposal that meets all of the abovementioned criteria, the State Board may appoint a subcommittee to consider whether there is evidence of need for the proposed change. The subcommittee will preside over subcommittee meetings wherein the proponents and the opponents of the proposal will have an opportunity to present their positions. These meetings are not hearings, but an opportunity for each side to present their positions to the subcommittee and an opportunity for the subcommittee to ask any questions they may have. In determining whether there is evidence of need to conduct a study, with regard to a request under either statute, the subcommittee will consider written submissions and oral presentations which address the following issues:

### A. Fiscal Issues

- 1) Will the new district have the fiscal and human resources to efficiently operate an educational program equivalent to that offered in the other affected districts?
- 2) Will the affected districts have the fiscal and human resources to continue to efficiently operate their educational programs?
- 3) Will all of the districts involved have pupil population and property valuation sufficient to maintain high school centers?
- 4) Will the new district have the capacity to assume the financial obligations associated with the proposed change?
- 5) Will the loss of either pupils or valuation be detrimental to the fiscal or educational operation of the any of the affected districts?
- 6) Is the property wealth in the affected area such that the motivation for the request could be considered a tax grab, or financially motivated?
- 7) Would the creation of a new district cause the new district or any of the remaining districts to become low wealth districts? (Status as a low

wealth district may be indicated by objective data, such as valuation per pupil.)

- 8) For each district affected:
  - (d) What is the inside millage?
  - (e) What is the outside operating millage?
  - (f) What is the bonded indebtedness millage?
- 9) What is the levy history in each of the affected districts?
- 10) Will the creation of the new proposed district cause a negative financial impact on the State of Ohio?
- 11) Provide copies of the affected districts' projected revenues and expenditures as set forth in the most recent five year forecasts. How would those forecasts

## B. <u>Facilities Issues</u>

- 1) Will the new district have adequate facilities to accommodate its anticipated enrollment?
- 2) What effect would the proposal have on the locations of school buildings within each of the affected districts, as well as the proposed new district?
- 3) What is the distance between the school buildings in:
  - (c) Each district affected by the proposal at this time?
  - (d) Each district affected if a new district is created by the State Board (including the proposed new district)?

## C. <u>Organizational Issues</u>

- 1) Will the proposed change contribute to good district organization for each of the affected districts?
- 2) Have previous territory transfer matters caused substantive harm to the any of the affected districts?
- 3) If approved, will the proposed change create any school district with noncontiguous territory?
- 4) Is any of the area affected by the proposal an isolated segment of the district(s) of which it is a part?
- 5) Will the municipal and school district boundary lines of the affected districts become coterminous as a result of this proposal, or in the alternative, cause them to not be coterminous?

## D. <u>Programmatic/Performance Issues</u>

- 1) What long-range educational planning for the students in the affected districts has taken place?
- 2) What designation did each of the affected districts and buildings receive on their State Report Cards for the last five years?
- 3) How will the proposed change affect the educational offerings/programs of the affected districts?
- 4) What course offerings will be available at the new district, as compared to the other remaining districts?
- 5) How will the proposed change affect the athletic programs and extracurricular activities of the affected districts? Will similar programs and activities be available to students of the proposed new district?

## E. Racial Issues

Are there racial isolation implications?

- (d) What is the percentage of minority students in each district involved?
- (e) If approved, would the proposal result in an increase in the percentage of minority pupils in the any of the districts involved?
- (f) If a new district is created, what would be the percentage of minority students in the new district?

## F. Additional considerations include, but are not limited to:

- 1. Documented agreements made by public agencies involved in municipal annexation proceedings should be honored;
- 2. A previous agreement entered into by the school districts concerned should be honored unless all concerned districts agree to amend it;
- 3. There should not be undue delay where any part of the affected territory has been annexed for municipal purposes;
- 4. The creation of a new district shall not cause, preserve, or increase racial isolation;
- 5. All school district territories should be contiguous unless otherwise authorized by law;
- 6. School district boundary lines that have existed for a long period of time should not be changed if substantial upheaval results because of long-held loyalties by the parties involved;
- 7. The pupil loss of any affected district should not be such that the educational program of that district is severely impaired;
- 8. The fiscal resources available to the new district and each affected district should be commensurate with the educational responsibilities of each district;

- 9. The educational facilities of the affected districts should be effectively utilized; and
- 10. The level of student and community involvement/engagement within the affected districts;

## **III.** Determination of Subcommittee:

Once each side has had an opportunity to present information to the appointed subcommittee, supporting its respective position with regard to the proposal, the subcommittee will determine whether or not evidence of need has been established. If the subcommittee determines that evidence of need has not been established, the chair of the subcommittee will report this recommendation to the State Board of Education which will act on the recommendation of the subcommittee. If the State Board of Education adopts a resolution accepting the subcommittee's recommendation, the parties will be notified and no further action will be taken on the proposal. If the State Board adopts a resolution rejecting the subcommittee's recommendation, the State Board will direct the Department of Education to conduct a study on the impact of the proposal.

If the subcommittee determines that evidence of need has been established, the chair of the subcommittee will submit the recommendation to the State Board of Education for a vote of the State Board. If the State Board rejects the recommendation of the subcommittee by resolution, no further action will be taken, and the parties will be notified of the Board's action. If the State Board accepts the recommendation of the subcommittee, the State Board will direct the Department of Education to conduct a study to consider the possibility of making improvements in school district organization. Such studies will include, but are not limited to: a fiscal and programmatic analysis of each affected district, as well as an analysis of the impact on state funding.

Once a study is completed by the Department of Education, the findings of the study will be presented to the State Board along with a recommendation. The Department's study will either recommend the formation of the proposed new district or indicate that the formation of a new district is not recommended. The State Board may either accept or reject the Department of Education's recommendation by a majority vote of the State Board.

## **APPENDIX I**

The following provides an overview of ethical guidelines. For complete information on training from the Ohio Ethics Commission at www.ethics.ohio.gov

References to the Ohio Revised Code and Ohio Administrative Rules are found at the State Board Home page on the Ohio Department of Education website at <a href="https://www.ode.state.oh.us">www.ode.state.oh.us</a>; "Board Member Quick Links": Ohio Administrative and Revised Code.

## ETHICS STATEMENT

## I: PURPOSE

The State Board of Education will carry out its mission in accordance with the strictest ethical guidelines to ensure that its members conduct themselves in a manner that fosters public confidence in the integrity of the State Board of Education, its processes, and accomplishments.

#### II. STATUTORY AUTHORITY

- 1. Ohio Revised Code (ORC): 102.02, 102.03 and 102.04
- 2. Ohio Administrative Code (OAC): 102 et.al.
- 3. ORC: 2921.42 and 2921.43
- 4. ORC: 3301.13

### III. DEFINITIONS

For the purposes of this statement:

A. ANYTHING OF VALUE includes anything of monetary value, including, but not limited to, money, gifts, food or beverages, social event tickets and expenses, travel expenses, golf outings, consulting fees, compensation, or employment. "Value" means worth greater than de minimis or nominal.

B. ANYONE DOING BUSINESS WITH THE STATE BOARD OR ODE includes, but is not limited to, any person, corporation or other party that is doing or seeking to do business with, that is regulated by or that has interests before the State Board or ODE.

#### IV. GENERAL STANDARDS OF ETHICAL CONDUCT

The State Board of Education must at all times abide by the protections to the public embodied in Ohio's ethics laws. The State Board of Education members receive a copy of the laws within 15 days of initial appointment or election to the board, as required in ORC 102.09. Members must conduct themselves in a manner that avoids favoritism, bias and the appearance of impropriety. A general summary of the restraints upon the conduct of all State Board of Education members includes, but is not limited to, those listed below:

No State Board of Education member shall:

- A. Solicit or accept anything of value from anyone doing business with the State Board of Education or ODE;
- B. Solicit or accept employment from anyone doing business with the State Board of Education or ODE, unless the official or employee completely withdraws from the State Board of Education activity regarding the party offering employment, and the State Board of Education approves the withdrawal;
- C. Use his or her public position to obtain benefits for an official or employee, a family member, or anyone with whom the official or employee has a business or employment relationship;
- D. Be paid or accept any form of compensation for personal services rendered on a matter before, or sell goods or services to, the State Board of Education or ODE;
- E. Be paid or accept any form of compensation for personal services rendered on a matter before, or sell (except by competitive bid) goods or services to, any state agency other than the ODE, unless the member meets the requirements directed by ORC 102.04;
- F. Hold or benefit from a contract with, authorized by, or approved by, the State Board of Education or ODE (the Ethics Law does except some limited stockholdings, and some contracts objectively shown as the lowest cost services, where all criteria under ORC 2921.42 are met);
- G. Vote, authorize, recommend or in any other way use his or her position to secure approval of a State Board of Education or ODE contract (including employment or personal services) in which the official or employee, a family member, or anyone with whom the official or employee has a business or employment relationship, has an interest;
- H. Solicit or accept honoraria [see ORC 102.01(H) and 102.03(H)];
- I. During public service, and for one year after leaving public service, represent any person, in any fashion, before any public agency, with respect to a matter in which the official or employee personally participated while serving with the State Board of Education. If a State Board of Education Member personally participated in a proceeding before the State Board of Education while a member the prohibition is for two years;
- J. Use or disclose confidential information protected by law, unless appropriately authorized; or,
- K. Use, or authorize the use of, his or her title, the name "State Board of Education or Ohio Department of Education," or logos, in a manner that suggests impropriety, favoritism or bias by the State Board of Education, ODE, or the member.

#### V. FINANCIAL DISCLOSURE

Every State Board of Education member is required to file a complete and accurate financial disclosure statement with the Ethics Commission by April 15<sup>th</sup> of each year. Any member appointed after February 15<sup>th</sup> must file a statement within ninety days of taking office. The Ohio Ethics Commission notifies State Board Members directly and the ODE Office of Board Relations and the Office Legal Counsel coordinate the filing process. Generally, gifts worth \$75 or more must be reported. However, reporting does not make a gift from an improper source acceptable. ODE pays the member's filing fee.

#### VI. GENERAL ETHICAL STATEMENTS

- A. In addition to the restrictions listed above, prohibitions that apply to public officials engaged in a private business include: Using any public resources in a private business; Using one's title while conducting private business activities; Using relationships with other public officials or employees to benefit the private business; Using the authority of one's position on the State Board of Education to benefit one's private business; Receiving payment for services on projects one recommended in one's capacity as a State Board of Education member; Using one's authority as an State Board of Education member to affect one's private business competitors; or otherwise using one's status as a State Board of Education member to benefit one's private business interests.
- B. A public official shall not use or disclose to any party, without appropriate authorization, any confidential information acquired in the course of performing official duties. This is a lifetime prohibition.

## VII. PENALTIES

Failure of a State Board of Education member to comply with Ethics laws, financial disclosure requirements and related statutes may result in civil penalties and fines, as well as any potential criminal sanctions under the law.

#### VIII. ASSISTANCE

The Ethics Commission is available to provide advice and assistance regarding the application of the ethics law and related statutes. The Commission can be contacted at (614) 466-7090. The Commission's Web address is: <a href="www.ethics.ohio.gov">www.ethics.ohio.gov</a>. In addition, the ODE Office of Legal Counsel is available to answer questions.

# Appendix J Roberts Rules Summary of Motions

Motion	Second Required	Debatable	Amendable	Vote Required	Reconsider
PRIVILEGED MOTIONS	1			1	
Fix the Time to Which to Adjourn	Yes	No	Yes	Majority	Yes
Adjourn	Yes	No	No	Majority	No
Recess	Yes	No	Yes	Majority	No
Raise a Question of Privilege	No	No	No	Chair Grants	No
Call for the Orders of the Day	No	No	No	No vote, demand	No
SUBSIDIARY MOTIONS Lay on the Table	Yes	No	No	Majority	Neg. only (3)
Previous Question	Yes	No	No	2/3	Yes
Limit or Extend Limits of Debate	Yes	No	Yes	2/3	Yes
Postpone to a Certain Time (of Definitely)	Yes	Yes	Yes	Majority	Yes
Commit or Refer	Yes	Yes	Yes	Majority	Yes
Amend	Yes	Yes (1)	Yes	Majority	Yes
Postpone Indefinitely	Yes	Yes	No	Majority	Affirm. Only
MAIN MOTION	Yes	Yes	Yes	Majority	Yes
INCINDENTAL MOTIONS Appeal	Yes	Yes (1)	No	Majority	Yes
Division of Assembly	No	No	No	No vote, demand	No
Division of a Question	Yes	No	Yes	Majority	No
Objection to the Consideration				,	
of a Question	No	No	No	2/3	Neg. Only
Parliamentary Inquiry	No	No	No	Chair answers	No
Point of Order	No	No	No	Normally no vote, chair rules	No
Suspend the Rules	Yes	No	No	(2)	No
Withdraw a Motion	No (3)	No	No	Majority (3)	Neg. Only
MOTIONS THAT B	RING A O	UESTION A	GAIN BEFOR	RE THE ASSEMI	BLY
Reconsider (4)	Yes	Yes (1)	No	Majority	No
Rescind (4)	Yes	Yes	Yes	Majority With notice, 2/3,or maj. of membership (3)	Neg. Only
Take from the Table (4)	Yes	No	No	Majority	No

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