

**TESTIMONY BEFORE THE SENATE EDUCATION COMMITTEE  
ON SENATE BILL 216**

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Ohio Department of Education  
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Good afternoon Chair Lehner, Vice Chair Huffman, Ranking Member Sykes and members of the Senate Education Committee. My name is Paolo DeMaria, and I am the superintendent of public instruction at the Ohio Department of Education.

Thank you for the opportunity to speak with you today about Senate Bill 216. I am here as an interested party because you all and I have a shared interest: working together to create the conditions that allow students to reach their fullest potential and that allow schools and districts to be excellent places for teaching and learning.

Let me begin by saying that I understand the reasons for this legislation. I recognize that there are some educators in Ohio who feel burdened by regulations. My staff and I are constantly in discussion with district leaders and educators about ways to improve Ohio's education system, including the elimination of unnecessary regulations. My highest priority is to provide opportunities for collaboration that drive improvement to our education system. Over my year and a half as state superintendent, I have worked hard to foster open lines of communication between the Department and those we serve.

Collaboration means balancing the various competing interest in any particular policy area. While some of the changes proposed in SB 216 reflect that balance, many of the changes would be a step backward for Ohio. As written, SB 216 would have wide consequences, including impeding the strides Ohio has made in early childhood education, unnecessarily duplicating current administrative efforts and, in several instances, putting the safety of Ohio's students at risk. I feel obligated to express these concerns before this committee in an effort to promote sound public policy.

As State Superintendent, I try to be cautious in how I approach new legislation. One of the major complaints I have heard from educators is about the pace of change in education. Before making any changes, I have attempted to create a set of lenses through which I look at change.

First and foremost, the question we should ask ourselves about any proposed policy change: *Is this change good for students?* Too often in education, policy discussions end up being about the adults in the room, and we can easily forget about the needs of students.

The other questions I ask myself are, *what are the reasons or goals that led to the current policy? What are the reasons behind the proposed changes? Do the proposed changes balance local and state interests? Do the proposed changes balance various stakeholder interests? Do the proposed changes create new local or state administrative burdens? What do experts and research say about proposed changes?*

Too often, we make changes because they look good on paper, without considering the wider implications of our decisions. When proposals come to me, I find it valuable to take a step back and analyze possible outcomes. Reactive approaches rarely give us the results we are seeking. While I am totally supportive of reducing regulation, we have to approach this goal deliberately. A thoughtful and thorough examination of a proposal may reveal consequences we had not previously considered.

I believe it would be useful to go through the provisions of this bill, point by point, and be clear on the consequences of the proposed changes it contains.

## **Educators and Licensure**

### **Educational Aides**

The first provisions I'd like to discuss in SB 216 relate to the licensure and evaluation of educators. SB 216 would eliminate the license currently required for educational aides in non-federally funded programs.<sup>1</sup> It further eliminates minimum qualifications of training for those aides who are in federally funded programs.<sup>2</sup> This represents more than 19,000 people working in classrooms across Ohio. Another provision would allow nonteaching employees to serve as substitute educational aides without licenses.<sup>3</sup> This would allow janitors, food service workers, and cafeteria monitors to serve as substitute educational aides. Current law already allows unlicensed employees to serve in this role, so long as they have completed background checks and are in the process of receiving a license. The process is not difficult but ensures that anyone working in this role is qualified to be one-on-one with students.

For those who are unfamiliar, educational aides serve many purposes in the classroom. They frequently spend one-on-one time with special needs students, assisting them with their daily needs, including following along in class, using the restroom, receiving individual assistance or eating lunch. These aides are often the frontline support for students with disabilities. Viewed through the lens of whether or not the change is good for students, it is difficult to understand how allowing unlicensed individuals to serve in these roles is a positive change – especially given that being appropriately licensed is an easy process and provides important protections.

Licensure is the mechanism through which Ohio ensures that our students are receiving an equitable, appropriate education. It is the state's method of certifying that no matter what district your children attend, the educators interacting with your students meet a quality standard. Eliminating minimum licensure standards and removing these important aides from the licensure system would be a step back in ensuring that every student, regardless of ability, is receiving service from qualified educators.

Licensure and permitting also are important because they are the state's means of monitoring and protecting the safety of students. Ohio relies on the retained applicant fingerprint database, commonly called Rapback, to monitor any criminal activity by those working directly with students. Before anyone receives a license or is permitted to interact with students in Ohio, that person receives an initial background check. If the individual passes that check and receives the license, he or she is then enrolled in Rapback through the Attorney General's Bureau of Criminal Investigation. While a

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<sup>1</sup> Page 117 of SB 216 (132<sup>nd</sup> GA), As Introduced

<sup>2</sup> Page 118

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background check provides a one-time snapshot of an applicant’s criminal history, Rapback is a system constantly checking for potential issues. The Department’s Office of Professional Conduct takes these issues seriously and has the ability, through licensure and disciplinary action, to protect students. We are able to investigate complaints, whether they are criminal or not, and ensure that license holders are not creating an unsafe environment for students.

As an example, under the changes in SB 216, an unlicensed educational aide hired by District A could behave inappropriately with a student, but the conduct may not rise to a criminal charge. When District B looks to hire this same educational aide, it is entirely plausible that this aide could hide the past conduct and work with students again. Our current system of licensure allows the state to flag this type of behavior and ensure that this aide is not able to work with students moving forward.

If this seems exaggerated, please know that since July 2016, the State Board of Education has disciplined 110 educational aides, including the full revocation of 20 permits. Additionally, 13 applicants were rejected for disciplinary reasons. Without this system in place, these adults would continue to have access to our students. Recent examples of behavior that have come before the State Board from these aides include an aide who locked a student in a closet, an aide who came to school under the influence of alcohol, and an aide who assaulted a special needs student by hitting the student’s head against a table and using the student’s hand to slap the student’s face multiple times.

Our licensure system for educational aides is designed to ensure an education from qualified adults in a safe environment. Although this licensure system may add burdens to adults seeking to work with students, they are not *unnecessary* burdens. We have a responsibility to protect children.

### **The Ohio Teacher Evaluation System**

The State Board of Education and I have been supportive of recommendations made by the Educator Standards Board regarding Ohio Teacher Evaluation System, also called OTES. While a statewide evaluation system for educators is valuable, it is important that the system reflect the state’s needs. SB 216 largely incorporates the recommendations of the Educator Standards Board and the State Board, with two major exceptions.

The first exception is easily addressed. SB 216 would require the changes to the system be adopted by the summer of 2018.<sup>4</sup> Given the required implementation timeline, it is unlikely that this could occur. In order to effectively implement the changes, schools and the State Board would need additional time.

The second exception is more complicated. SB 216 would completely eliminate student academic growth measures from OTES.<sup>5</sup> The Educator Standards Board and the State Board have recommended that student growth measures remain embedded in appropriate components of the OTES teacher performance rubric. Additionally, SB 216 would allow district-approved tests to qualify as high-quality data for OTES.<sup>6</sup> The Educator Standards Board recommended that the state determine which tests qualify as high-quality. The reasoning behind this is simple — having a standard measurement across the state is important. Measuring in inches in Cleveland, centimeters in Dayton, and yards in Lima will

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<sup>4</sup> Page 128

<sup>5</sup> Page 123

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only lead to confusion. I would urge you to adopt the recommendations that the Educator Standards Board and the State Board have provided without modification.

### **Educator Grade Bands**

A provision in SB 216 would change educator licensure so that all licenses would fall within only two grade bands: kindergarten through grade 8, or grades 6 through 12.<sup>7</sup> Ohio's current licensing grade bands are the result of an extensive policy development process. The current grade bands are: pre-kindergarten through grade 3; grades 4 through 9; grades 7 through 12; and, for select subjects, pre-kindergarten through grade 12. Experts, including the National Association for the Education of Young Children and the National Council on Teacher Quality, have long held that students of different ages learn in different ways.<sup>8,9</sup>

Our current system is designed to allow as much flexibility as possible while respecting the needs of students. A Spanish teaching license, for instance, is currently a pre-kindergarten through grade 12 license. Science and math, however, are intentionally broken down by grades 4 through 9 and grades 7 through 12. We should not expect an educator to be an expert in teaching the basic principles of math needed in kindergarten, teaching fourth-graders about fractions, and teaching eighth-graders to analyze and solve linear equations.

I also would point out that this provision of SB 216 eliminates pre-kindergarten licensure. This license is one of the few that Ohio recognizes as a requirement for licensed early childhood education programs. Eliminating pre-kindergarten licenses would be a step backward in ensuring that Ohio's youngest learners are receiving a quality start to their education.

As always, if there are specific instances where the Department can work with a district or educator on specific licensure situations, we are happy to have that discussion. Frankly, this happens all the time. However, viewed through the lens of what is best for students, a broad approach to licensure grade bands, like the one in this bill, would not align with best practices.

### **Licensure Flexibility**

Two separate provisions in SB 216 raise similar concerns. The first is designed to allow schools to assign a teacher to any subject or grade, regardless of the license the educator holds.<sup>10</sup> The second is designed to allow substitute teachers to teach in any classroom for as long as needed.<sup>11</sup> Both changes would greatly increase flexibility for districts. A superintendent would now be able to place an elementary math teacher in a high school English classroom or move a high school science teacher down to teach elementary social studies. When the high school math teacher is out for 20 weeks with an illness, the school would not have to find a properly certified replacement, but could move a substitute with a college degree in history into that classroom. These changes may provide a new

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<sup>7</sup> Page 133

<sup>8</sup> "Developmentally Appropriate Practice in Early Childhood Programs Serving Children from Birth through Age 8," <https://www.naeyc.org/sites/default/files/globally-shared/downloads/PDFs/resources/position-statements/PSDAP.pdf>.

<sup>9</sup> "2015 State Teacher Policy Yearbook," National Council on Teacher Quality, [https://www.nctq.org//dmsView/2015\\_State\\_Teacher\\_Policy\\_Yearbook\\_National\\_Summary\\_NCTQ\\_Report](https://www.nctq.org//dmsView/2015_State_Teacher_Policy_Yearbook_National_Summary_NCTQ_Report).

<sup>10</sup> Page 142

<sup>11</sup> Page 142

degree of flexibility to administrators, but again, when viewed through the lens of what is best for students, this change would not be beneficial.

We have an example of why this is so important. Just last year in Tennessee, a school was able to use a substitute with no subject matter expertise for an entire year in a chemistry classroom.<sup>12</sup> None of that teacher's 65 students passed their state test and 92 percent of them fell in the lowest scoring category.

State and federal policy-makers have long recognized the need for content expertise in the classroom. Just as you would not want me to teach you how to lay the foundation for the new home you are building, we should not be comfortable having those with no subject matter expertise teaching our students the foundations of math, science and history. As I described previously, licensure is the state's method of certifying that a child's teacher has the proper training and knowledge to teach certain classes. These provisions essentially eliminate that surety.

I will point out, additionally, that my staff and I are having these same discussions and attempting to offer flexibility when reasonable. Ohio recently extended the period in which a substitute could serve in a classroom from five days to 60. This number was the result of extensive discussion with school leaders and experts in the field.

The Department recently has made great strides in simplifying the process for educators to add additional license areas. For example, a currently-licensed science teacher can receive an initial supplemental license in social studies if the educator passes the subject area content exam. We no longer require additional college coursework if educators can show content expertise. This is one of the ways we have responded to a need for flexibility without compromising the quality of a student's education.

One final point on licensure: any school that receives federal Title I funding would be putting this funding at risk by placing educators outside of their areas of licensure. As the Legislative Service Commission points out in its analysis of this bill, a range of enforcement actions could be taken for noncompliance with federal requirements, including penalizing the state as a whole or withholding the school's funds. Giving schools this option would only increase confusion and risk this critical funding.

## **State Testing and Accountability**

### **Kindergarten Testing**

Language in SB 216 would eliminate the Kindergarten Readiness Assessment (KRA) and other kindergarten diagnostic tests.<sup>13</sup> As background, Ohio established the KRA to be a standard measurement of student readiness and the effectiveness of early education practices throughout the state. A singular and consistent measure offers educators and district leaders insight into the needs of their communities. The KRA provides schools and districts with an understanding of each child's academic, social, emotional and physical needs as they begin kindergarten. It also provides the state with information that allows us to gauge the broader performance of the early childhood system.

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<sup>12</sup> Pignolet, Jennifer. "A Shelby County School Went Nearly a Year Without a Chemistry Teacher – and No Students Passed the Test." The Commercial Appeal. October 16, 2017. <http://www.commercialappeal.com/story/news/education/2017/10/15/shelby-county-school-went-nearly-year-without-chemistry-teacher-and-no-students-passed-test/758345001/>.

<sup>13</sup> Page 52, page 100

We worked with this legislature in the budget to expand flexibility for districts to begin offering the KRA earlier in the year to better accommodate the busy schedules of schools and districts. Additionally, assessment scores are available to the school and families upon completion, allowing faster responses to the needs demonstrated by students.

It is important to note that the KRA is not the standardized test you may be imagining. This assessment is one-on-one time for an educator to evaluate each student's development and needs. When we discuss this assessment, do not think of the Bar exam. Instead, picture a kindergarten teacher sitting down with a student to look at pictures of flowers and determine which group has the most in it. This is an individual opportunity for the educator to work directly with the student.

Schools may use the language and literacy portion of the KRA as the required reading diagnostic to determine if their kindergarten students are on track for reading on grade level by grade 3 as a part of the Third Grade Reading Guarantee. Using this or other tests for this purpose allows a school to establish, at an early age, which students are in need of greater supports in reading.

The education community too often is asked to do more with less, to be more efficient and find processes that can be streamlined. The KRA is a great example of a single tool that produces valid results that serve many purposes and is fundamental to Ohio's early childhood quality improvement strategy. I find it hard to understand how eliminating this assessment that provides such important information to schools is good for students.

Reading is the foundation for all learning, so it is important that we continue to drive attention to struggling readers in the earliest grades. Eliminating the KRA and kindergarten diagnostics would impact the current measure of literacy improvement on the state report card.<sup>14</sup> That measure, titled "K-3 Literacy," uses data from those assessments as the benchmark for whether students are on track for reading. The K-3 Literacy measure encourages schools and teachers to think proactively about literacy intervention for their youngest learners. The elimination of kindergarten from this measure will erode that effort. We should not be content with literacy intervention waiting until first grade.

### **State Report Card**

Just as the report card drives attention to early literacy, it also can drive supports to subgroups of students. Federal law requires the state to establish minimum group sizes for the data that will appear on the state report card. This is referred to as *n*-size and dictates whether districts and schools are held accountable for certain groups of students. A provision in SB 216 sets the state's *n*-size at 30 students, a provision which conflicts with recent decisions made by the State Board.<sup>15</sup> Ohio previously set the *n*-size at 30, meaning that schools with 29 or fewer students in a specific group would not be evaluated for the performance of these groups.

As part of the development of the state's plan for implementing the Every Student Succeeds Act (ESSA), the Department held meetings around the state, and stakeholders did not reach a consensus on the topic of *n*-size. Some groups wanted the *n*-size lowered immediately to ensure that schools are being held accountable for the performance of minority and high-need groups, while others wanted to

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<sup>14</sup> Page 65

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hold *n*-size steady to avoid impacting the performance of districts with small numbers of students in these groups.

After considering this feedback, the State Board included an *n*-size of 15 in Ohio's ESSA application, to be phased in over three years. This decision was driven by the goal of ensuring that all students have the supports necessary to succeed. Too often, gifted students, English language learners and students with disabilities are excluded from a school's subgroup analysis with an *n*-size of 30. The needs of these students are no less important than others. I feel it is important to allow the phase-in, as planned, and provide an incentive for every school to focus on improving outcomes for all their students.

### **State Assessments**

Language in SB 216 requires the Department to request certain materials from the American Institutes for Research (AIR).<sup>16</sup> This requirement is troubling for two reasons. First, it seems inappropriate to name a specific vendor in the Ohio Revised Code, given that further changes would be needed should the state change vendors in the future. Second, this change duplicates current activities and could create unnecessary burdens.

Ohio already has an analysis of how test questions align to state standards. Ohio's test development process includes more than 150 Ohio educators who review and evaluate every item on every state test. Teams of Ohio teachers, our Content Advisory Committees, review questions on state assessments to ensure they are valid and appropriate measures of the content standards for each subject area and grade level. These committees are prescribed by state law and already provide this analysis. I would rather have Ohioans doing this work than out-of-state contractors.

In consultation with AIR, the state also provides test preparation materials, including test blue prints, practice tests and previously used test items. This year, the Department released school-specific analyses of how students performed by standard for the math, science and social studies tests. These reports allow educators to identify strengths and weaknesses by each standard, which supports improvement in classrooms. As we are already producing these materials, duplicating efforts through other sources in Ohio law would be unnecessary. If there are resources that educators feel they are lacking, I am always happy to discuss how the Department can address those needs.

### **Paper Tests**

A provision in SB 216 would permit schools to administer state tests in grades 3 through 5 in a paper format on a student-by-student basis.<sup>17</sup> Ohio has been transitioning to computer-based testing for most of this decade. Two years ago, just over 80 percent of tests were administered by computer, and last year the number was over 94 percent. This fall, more than 99 percent of grade 3 English language arts tests were administered by computer. While the state continues to offer waivers for schools that are physically unable to provide tests electronically or to students who need a religious exemption, the expectation is that tests will be given by computer.

I have been a public proponent of computer-based testing for many reasons. In education, there is a tension between giving a test too early in order to get results sooner and giving the test too late in order to cover more of the school year. It is important to seek test modes that allow the state to

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maximize its efficiency in returning these test scores to schools. Computer-based tests can be processed more quickly and are less expensive. Ohio has adopted technology standards that reflect our expectation that students are learning how to use computers. These expectations lead to students having the ability to navigate tests, a common question about computer assessments. Additionally, it is important for all students to be taking tests through a single mode of testing. Reverting back to multiple modes of test administration will create confusion about validity, reduce pressure to integrate technology in classrooms, increase costs and restrict the efficiencies gained by online administration.

## **School Mandates**

### **Reading Improvement Plans**

A mandate in SB 216 requires a school to establish a reading improvement plan if less than 80 percent of its students are scoring “proficient” on the third grade English language arts assessment.<sup>18</sup> Current law already has a requirement that, if after two years, a district or community school has less than 60 percent of its students scoring “proficient” or higher on the grade 3 English language arts assessment and the district or community school receives a letter grade of D or F on the “K-3 Literacy” measure, the school must create a reading achievement plan. The bill keeps the current requirement and adds this new mandate on top of it. This language would duplicate reading improvement measures that some schools already are implementing and increase the number of schools and districts that need to establish reading improvement plans.

### **School Mandate Report**

A provision in SB 216 requires the Department to create and monitor a new school mandate report.<sup>19</sup> This report would require schools to gather already-reported information on a number of school safety issues. This would be an added burden on schools and the Department, as it does nothing more than create an additional report that summarizes current requirements.

## **Student Services**

### **Excessive Absences**

Language in SB 216 makes changes to the definition of “excessively absent” students, which was recently adopted in House Bill 410 of the 131<sup>st</sup> General Assembly.<sup>20</sup> HB 410 requires districts to have absence intervention plans, which take effect when a student is declared “excessively absent.” This has caused some confusion for school districts. Declaring a student “excessively absent” is not the same as declaring a student “truant.” The only requirements for “excessively absent” students are parental notification and any additional measures the district has specified in its absence intervention plan. SB 216 limits the absences that count toward “excessively absent” to only unexcused absences, as is the case for truancy.

This provision of HB 410 was intended for districts to thoughtfully address absences, including excused absences. While it might seem wasteful for schools to evaluate excused absences, research has found that missing more than 10 percent of a school year, for any reason, has a significant effect on

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<sup>18</sup> Page 54

<sup>19</sup> Page 60

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achievement. Establishing a quality data system for excused absences may identify themes or causes. For example, the Health Policy Institute of Ohio evaluated chronic absenteeism in Dayton City Schools. This study found that chronic absenteeism is 66 percent more likely in students with diabetes. Knowing this kind of information helps schools address problems that may be impacting their students.

What is likely needed in this case is not a legislative change but further clarification on the implementation of HB 410. The Department has published an extensive list of frequently asked questions and continues to work directly with schools that ask questions or express difficulty. Changing this statute so soon after passing it would add more confusion.

### **Gifted Students**

A provision in SB 216 would prohibit the Department from requiring educators working with gifted students to do professional development focused on gifted education.<sup>21</sup> This directly reverses a rule recently adopted by the State Board. The rule was developed with stakeholder input over a five-year period of deliberation and is designed to meet the needs of Ohio's gifted students without overburdening educators. It was cleared through JCARR with no opponent testimony.

During the process of creating this rule, multiple superintendents testified that they wanted clear guidance and flexibility in serving gifted students. Families of gifted children stated that they wanted educators working with their students to have thorough training in gifted education. This rule is a balance of those interests. Before changing this requirement, the breadth of the discussion and the needs of these students should be taken into account.

## **College Credit Plus**

### **High School Courses**

The idea that students should have choices in their own higher education options is a basic principle of the College Credit Plus program. Language in SB 216 would remove that choice for some students, requiring them to take certain college courses at their high school rather than allowing them the opportunity to take the course on a college campus.<sup>22</sup> Students should have the option to take classes on campus and be exposed to the college environment. One of the great successes of College Credit Plus has been exposing students, who might never have considered higher education, to college campuses. This experience and choice in these matters are important parts of College Credit Plus, and I would question any change that takes away from these student options.

### **Textbooks**

Textbook costs have been a widely debated aspect of College Credit Plus. SB 216 takes an approach that would require families to pay half the cost of textbooks, while local schools would pay the other half.<sup>23</sup> A founding principle of College Credit Plus was that Ohio's families would not be asked to foot the bill. This program exists to encourage students to earn college and high school credit at the same time. It would be more appropriate to address ways to reduce textbook costs overall or consider cost sharing between secondary and higher education institutions, rather than placing a new burden on

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students and families. The proposal seems likely to discourage student participation, which has never been an approach I favor.

### **Efficiency Study**

A provision in SB 216 would task the Department with doing a cost-efficiency study on College Credit Plus.<sup>24</sup> Similar studies already are required of the Department of Higher Education, which houses the program. This study seems duplicative of current mandates and would add an unnecessary burden to our efforts to promote cost-effective government.

### **Conclusion**

Chair Lehner and members of the committee, I recognize that districts and superintendents may have unresolved questions or concerns about current laws or rules. Many of these may be individual issues that could be addressed through existing pathways. I hope you will not confuse my perspective on provisions in this bill with an unwillingness to find solutions to challenges expressed by proponents. As I mentioned several times in this testimony, my team and I have worked with stakeholders and legislators to amend laws and rules to allow for sensible flexibility. My goal as superintendent has been to foster an environment that allows the whole education community to have input in the decisions that impact classrooms across the state.

It is my hope that my staff and I can continue to engage with our superintendents, principals, teachers, parents, students and other stakeholders so that they feel encouraged to bring these issues to us rather than propose legislation upending a whole system in order to address a singular issue. I would be happy to answer any questions.

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<sup>24</sup> Page 162