

ORC Ann. 3321.01

Current with Legislation passed by the 132nd General Assembly and filed with the Secretary of State through file 105 (SB 81), except for file 96 (HB 87).

Page's Ohio Revised Code Annotated > Title 33: Education — Libraries (Chs. 3301 — 3385) > Chapter 3321: School Attendance (§§ 3321.01 — 3321.99)

§ 3321.01 Compulsory school age; admission to kindergarten or first grade; pupil personnel services committee; kindergarten provisions; annual survey.

(A)

(1)As used in this chapter, “parent,” “guardian,” or “other person having charge or care of a child” means either parent unless the parents are separated or divorced or their marriage has been dissolved or annulled, in which case “parent” means the parent who is the residential parent and legal custodian of the child. If the child is in the legal or permanent custody of a person or government agency, “parent” means that person or government agency. When a child is a resident of a home, as defined in [section 3313.64 of the Revised Code](#), and the child’s parent is not a resident of this state, “parent,” “guardian,” or “other person having charge or care of a child” means the head of the home.

A child between six and eighteen years of age is “of compulsory school age” for the purpose of [sections 3321.01 to 3321.13 of the Revised Code](#). A child under six years of age who has been enrolled in kindergarten also shall be considered “of compulsory school age” for the purpose of [sections 3321.01 to 3321.13 of the Revised Code](#) unless at any time the child’s parent or guardian, at the parent’s or guardian’s discretion and in consultation with the child’s teacher and principal, formally withdraws the child from kindergarten. The compulsory school age of a child shall not commence until the beginning of the term of such schools, or other time in the school year fixed by the rules of the board of the district in which the child resides.

(2)In a district in which all children are admitted to kindergarten and the first grade in August or September, a child shall be admitted if the child is five or six years of age, respectively, by the thirtieth day of September of the year of admittance, or by the first day of a term or semester other than one beginning in August or September in school districts granting admittance at the beginning of such term or semester. A child who does not meet the age requirements of this section for admittance to kindergarten or first grade, but who will be five or six years old, respective, prior to the first day of January of the school year in which admission is requested, shall be evaluated for early admittance in accordance with district policy upon referral by the child’s parent or guardian, an educator employed by the district, a preschool educator who knows the child, or a pediatrician or psychologist who knows the child. Following an evaluation in accordance with a referral under this section, the district board shall decide whether to admit the child. If a child for whom admission to kindergarten or first grade is requested will not be five or six years of age, respectively, prior to the first day of January of the school year in which admission is requested, the child shall be admitted only in accordance with the district’s acceleration policy adopted under [section 3324.10 of the Revised Code](#).

(3)Notwithstanding division (A)(2) of this section, beginning with the school year that starts in 2001 and continuing thereafter the board of education of any district may adopt a resolution establishing the

first day of August in lieu of the thirtieth day of September as the required date by which students must have attained the age specified in that division.

(4) After a student has been admitted to kindergarten in a school district or chartered nonpublic school, no board of education of a school district to which the student transfers shall deny that student admission based on the student's age.

(B) As used in division (C) of this section, "successfully completed kindergarten" means that the child has completed the kindergarten requirements at one of the following:

(1) A public or chartered nonpublic school;

(2) A kindergarten class that is both of the following:

(a) Offered by a day-care provider licensed under Chapter 5104. of the Revised Code;

(b) If offered after July 1, 1991, is directly taught by a teacher who holds one of the following:

(i) A valid educator license issued under *section 3319.22 of the Revised Code*;

(ii) A Montessori preprimary credential or age-appropriate diploma granted by the American Montessori society or the association Montessori internationale;

(iii) Certification determined under division (F) of this section to be equivalent to that described in division (B)(2)(b)(ii) of this section;

(iv) Certification for teachers in nontax-supported schools pursuant to [section 3301.071 of the Revised Code](#).

(C)

(1) Except as provided in division (A)(2) of this section, no school district shall admit to the first grade any child who has not successfully completed kindergarten.

(2) Notwithstanding division (A)(2) of this section, any student who has successfully completed kindergarten in accordance with section (B) of this section shall be admitted to first grade.

(D) The scheduling of times for kindergarten classes and length of the school day for kindergarten shall be determined by the board of education of a city, exempted village, or local school district.

(E) Any kindergarten class offered by a day-care provider or school described by division (B)(1) or (B)(2)(a) of this section shall be developmentally appropriate.

(F) Upon written request of a day-care provider described by division (B)(2)(a) of this section, the department of education shall determine whether certification held by a teacher employed by the provider meets the requirement of division (B)(2)(b)(iii) of this section and, if so, shall furnish the provider a statement to that effect.

(G) As used in this division, "all-day kindergarten" has the same meaning as in [section 3321.05 of the Revised Code](#).

(1) A school district that is offering all-day kindergarten for the first time or that charged fees or tuition for all-day kindergarten in the 2012-2013 school year may charge fees or tuition for a student enrolled in all-day kindergarten in any school year following the 2012-2013 school year. The department shall adjust the district's average daily membership certification under [section 3317.03 of the Revised Code](#) by one-half of the full-time equivalency for each student charged fees or tuition for all-day kindergarten under this division. If a district charges fees or tuition for all-day kindergarten under this division, the district shall develop a sliding fee scale based on family incomes.

(2)The department of education shall conduct an annual survey of each school district described in division (G)(1) of this section to determine the following:

(a)Whether the district charges fees or tuition for students enrolled in all-day kindergarten;

(b)The amount of the fees or tuition charged;

(c)How many of the students for whom tuition is charged are eligible for free lunches under the “National School Lunch Act,” 60 Stat. 230 (1946), [42 U.S.C. 1751](#), as amended, and the “Child Nutrition Act of 1966,” 80 Stat. 885, [42 U.S.C. 1771](#), as amended, and how many of the students for whom tuition is charged are eligible for reduced price lunches under those acts;

(d)How many students are enrolled in traditional half-day kindergarten rather than all-day kindergarten.

Each district shall report to the department, in the manner prescribed by the department, the information described in divisions (G)(2)(a) to (d) of this section.

The department shall issue an annual report on the results of the survey and shall post the report on its web site. The department shall issue the first report not later than April 30, 2008, and shall issue a report not later than the thirtieth day of April each year thereafter.

History

GC § 4849; 120 v 475(560); Bureau of Code Revision, 10-1-53; 131 v 805 (Eff 8-1-67); 131 v 806 (Eff 8-1-67); 132 v S 190 (Eff 8-25-67); 135 v H 159 (Eff 9-30-75); 137 v H 811 (Eff 8-21-78); 138 v H 550 (Eff 7-18-80); 139 v S 140 (Eff 7-1-81); 143 v S 140 (Eff 7-1-90); 143 v H 738 (Eff 7-13-90); 143 v S 3 (Eff 4-11-91); [144 v H 250](#) (Eff 3-23-93); [146 v H 117](#) (Eff 9-29-95); [146 v S 230](#) (Eff 10-29-96) [148 v H 281](#) (Eff 10-29-99); [148 v H 383](#) (Eff 2-13-2001); [149 v H 94](#). Eff 9-5-2001; [152 v H 190](#), § 1, eff. 11-14-07; [153 v H 1](#), § 101.01, eff. 10-16-09; [2011 HB 30](#), § 1, eff. July 1, 2011; [2012 SB 316](#), § 101.01, eff. Sept. 24, 2012; [2013 HB 59](#), § 101.01, eff. Sept. 29, 2013.

Annotations

Notes

Editor’s Notes

The provisions of § 4 of [152 v H 190](#) read as follows:

SECTION 4. The amendments to [section 3321.01 of the Revised Code](#) by this act are intended to clarify the General Assembly’s original intent related to a school district’s authority to charge fees or tuition for students enrolled in all-day kindergarten as it existed prior to the effective date of this section, are remedial in nature, and are not intended to create any new authority.

Amendment Notes

The 2013 amendment, in the first sentence of (A)(2), deleted “No child shall be admitted to a kindergarten or a first grade of a public school” from the beginning, substituted “a child shall be admitted if” for “unless,” and deleted “unless the child has been recommended for early admittance in accordance with the district’s acceleration policy adopted under section 3324.10 of the Revised Code”; in the second sentence of (A)(2), substituted “requirements of this section” for “requirement,” inserted “but who will be five or six years old, respective, prior to the first day of

January of the school year in which admission is requested,” and inserted “in accordance with district policy”; added the last two sentences to (A)(2); added (C)(2); and rewrote (G)(1).

The 2012 amendment rewrote (A)(2); substituted “division (A)(2)” for “divisions (A)(2) and (D)” in (A)(3); added (A)(4); in the introductory language of (B), substituted “division (C)” for “divisions (C) and (D)” and deleted “and ‘successful completion of kindergarten’” following “‘successfully completed kindergarten’”; substituted “division (A)(2)” for “division (D)” in (C); deleted (D), pertaining to; the request of a parent, the requirement of division (C) of this section may be waived by the district’s pupil personnel services committee in the case of a child who is at least six years of age by the thirtieth day of September of the year of admittance and who demonstrates to the satisfaction of the committee the possession of the social, emotional, and cognitive skills necessary for first grade; redesignated former (E) through (H) as (D) through (G); and made stylistic changes.

The 2011 amendment deleted “subject to section 3321.05 of the Revised Code” from the end of (E); and rewrote (H).

153 v H 1, effective October 16, 2009, in (E), added “subject to section 3321.05 of the Revised Code” to the end; and rewrote (H).

152 v H 190, effective November 14, 2007, added (H).

Notes to Decisions

Constitutionality

Compulsory school age

Curfew ordinance

Mentally handicapped children

Nonpublic schools

Public policy

Constitutionality

The compulsory education law is constitutional: [*Parr v. State*, 117 Ohio St. 23, 157 N.E. 555, 5 Ohio Law Abs. 399, 1927 Ohio LEXIS 265 \(Ohio 1927\)](#).

Compulsory school age

All children in Ohio of compulsory school age who have not been dismissed from school under the statutory standard (which existed prior to 136 v H 455) are subject to compulsory education, and it is the duty of the defendants to enforce the provisions of R.C. Chapter 3321. as to such children: [*Cuyahoga County Asso. for Retarded Children & Adults v. Essex*, 411 F. Supp. 46, 1976 U.S. Dist. LEXIS 15731 \(N.D. Ohio 1976\)](#).

Curfew ordinance

A municipal ordinance which provides that no person under the age of 18 years be upon or about public streets within the city during the hours when his attendance is required at either private or public schools is complementary to the general laws in respect to compulsory school attendance, is not in conflict with general laws, and bears a reasonable and substantial relationship to the general public welfare: [*In re Carpenter*, 31 Ohio App. 2d 184, 60 Ohio Op. 2d 287, 287 N.E.2d 399, 1972 Ohio App. LEXIS 425 \(Ohio Ct. App., Franklin County 1972\)](#).

Mentally handicapped children

Special provisions for the mentally handicapped do not violate the equal protection clause: [*Cuyahoga County Asso. for Retarded Children & Adults v. Essex*, 411 F. Supp. 46, 1976 U.S. Dist. LEXIS 15731 \(N.D. Ohio 1976\)](#).

Nonpublic schools

Under the compulsory education laws ([R.C. 3321.01](#) et seq.) every parent of any child of compulsory school age (with certain limited exceptions) must send such child to a public, private or parochial school for the full time the school attended is in session; and if such child attends instruction elsewhere than in a public school such instruction shall be equivalent to the instruction given children of like age and advancement in the public schools of the district in which such child resides: [*State v. Hershberger*, 103 Ohio App. 188, 3 Ohio Op. 2d 249, 144 N.E.2d 693, 1955 Ohio App. LEXIS 506 \(Ohio Ct. App., Hardin County 1955\)](#).

The parents of a child who attends a private school in which the instruction is not the equivalent to the instruction given children of like age and advancement in the public schools of the district in which such child resides are guilty of a failure to cause such child to attend school as required by the compulsory education laws of Ohio: [*State v. Hershberger*, 103 Ohio App. 188, 3 Ohio Op. 2d 249, 144 N.E.2d 693, 1955 Ohio App. LEXIS 506 \(Ohio Ct. App., Hardin County 1955\)](#).

Public policy

Revised Code §§ [3321.01](#) and [3321.04](#) exemplify another public policy of this state, which is that our free civilization in this country and in this state will maintain itself and advance only as its members become educated so as to be able to add their knowledge to that of their forefathers and thus progress: [*State v. Gans*, 168 Ohio St. 174, 5 Ohio Op. 2d 472, 151 N.E.2d 709, 1958 Ohio LEXIS 399 \(Ohio 1958\)](#), cert. denied, 359 U.S. 945, 79 S. Ct. 722, 3 L. Ed. 2d 678, 1959 U.S. LEXIS 1329 (U.S. 1959).

Opinion Notes

ATTORNEY GENERAL OPINIONS

All children of compulsory school age, whether married or single, are subject to the compulsory attendance provisions of R.C. Chapter 3321, unless exempted or excused from attendance for one or more of the statutory reasons set forth therein: [*1977 Ohio Op. Att'y Gen. No. 001 \(1977\)*](#).

A local board of education has no mandatory duty to use or obtain an educationally accepted standardized testing program as a means to determine exceptions to the compulsory school age requirements: 1967 Ohio Op. Att'y Gen. No. 072 (1967).

A local board of education that does use or obtain an educationally accepted standardized testing program as a means to determine exceptions to the compulsory school age requirements, has a mandatory duty upon request of the child's parent or guardian, to test a child who will be six years of age on or before the first day of January of the school year for which admission is requested: 1967 Ohio Op. Att'y Gen. No. 072 (1967).

A local board of education does not have authority to establish a minimum compulsory school age date which would enable any child to be eligible for admittance to the first grade of a public school unless such child is six years of age on or before the thirty-first day of October of the year of admittance or on or before the first day of a term or semester other than one beginning in August or September in school districts granting admittance at the beginning of such term or semester. However, if the local board of education has first raised the minimum compulsory school age to seven, it may then set any date during the year on or before which a child must be seven years of age: 1967 Ohio Op. Att'y Gen. No. 072 (1967).

Pursuant to [R.C. 3321.01](#), a board of education is required to designate by rule or regulation a standard or norm which the child failing the age requirement for first grade may meet in lieu of fulfilling said age requirement: 1967 Ohio Op. Att'y Gen. No. 126 (1967).

The cost of administering the testing program pursuant to [R.C. 3321.01](#) must be paid from public funds: 1967 Ohio Op. Att'y Gen. No. 126 (1967).

Because Ohio's compulsory school attendance law, set forth in [R.C. 3321.01](#) et seq., permits home-based instruction that meets state requirements, rather than attendance at public schools, the law is not necessarily in conflict with [Wisconsin v. Yoder, 406 US 205 \(1972\)](#), or [State v. Whisner, 47 OS2d 181, 1 OO3d 105 \(1976\)](#): [1979 Ohio Op. Att'y Gen. No. 056 \(1979\)](#).

There is no intelligence quotient below which a local board of education is without authority to provide classes for children. Unless and until a determination that a child with an intelligence quotient below fifty is incapable of profiting substantially by further instruction, the age limits to be considered in determining the necessity for providing classes to such children are the same age limits which must be considered for providing classes for all children. Until such a determination is made, therefore, the only age limits which have any application to providing classes for children are the compulsory school age limits contained in [R.C. 3321.01](#), which provides that a child between six and eighteen years of age is of compulsory school age: 1969 Ohio Op. Att'y Gen. No. 040 (1969).

A board of education which does not have a kindergarten program as part of its curriculum is neither obligated nor permitted to assume the cost of tuition for a child under six years of age who resides within its district and attends a kindergarten program in another school district. If a welfare agency has placed a child in a kindergarten program outside the district of the residence of the child's parents, the parents will be responsible for the tuition if they are able to pay. If they are not able to pay, the welfare agency will be responsible for the tuition, even if the board of education of the parents' residence has made no provision for a kindergarten program: 1972 Ohio Op. Att'y Gen. No. 099 (1972).

A local board of education has authority to levy local taxes and spend public money for the purpose of maintaining and operating a school, even though such school fails to meet the minimum standards set by the state board of education. Pupil attendance at an elementary school which fails to meet the minimum standards for elementary schools set by the state board of education is not such school attendance as is required by [R.C. 3321.01](#) et seq.: 1959 OAG No. 284 (1959).

A board of education which has not already established a testing program relative to the admission to the first grade of children failing to meet the age requirement of the general provisions of [R.C. 3321.01](#) must designate the necessary standards and a testing program it will accept: 1967 Ohio Op. Att'y Gen. No. 126 (1967).

Research References & Practice Aids

Cross-References to Related Sections

Definitions for handicapped children education law, RC § [3323.01](#).

Failure to send child to school, RC § [3321.38](#).

Free schooling for residents; tuition for non-residents, RC § [3313.64](#).

Parent, guardian or custodian defined, RC § [3301.52](#).

Restrictions on hours of employment, RC § [4109.07](#).

Terms of contract between sponsor and governing authority; comprehensive plan, *RC* § *3314.03*.

Comparative Legislation

Compulsory education:

CA—Cal Ed Code §§ [48200](#), [48400](#)

FL—Fla. Stat. § 232.01

IL—105 ILCS § 5/26-1

IN—Burns Ind. Code Ann. § 20-8.1-3-17

KY—KRS § 159.010

MI—MCLS § [380.1561](#)

NY—NY CLS Educ § [3201](#) et seq

PA—24 P.S. § 13-1327

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