

**PRELIMINARY REPORT TO THE  
SUPERINTENDENT  
TOLEDO PUBLIC SCHOOLS**

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Recent press reports drew attention to the subject of how Ohio public schools compile and report student data, including attendance reports and student-testing reports, with particular attention to the treatment of habitually or chronically truant students. In response to these press reports, the Superintendent of the Toledo Public Schools (TPS or the “District”) began a review of the TPS procedures for reporting student data to determine applicable state law and regulations and whether TPS’s practices complies with them.

As part of that review, the Superintendent asked that I evaluate the state statutory and regulatory laws that govern the collection and reporting of student-testing data, as well TPS’s historical and current policies and district-wide practices regarding those subjects. In accordance with this charge, I focused my inquiry on the guidance that has been available to TPS (without making my own inquiries to the Ohio Department of Education) in statutes, regulations, and ODE publications, as well as oral and written communications TPS personnel have had with ODE representatives. I concentrated on TPS policy and district-wide practices regarding the handling and reporting of student data. I was not asked, and I did not undertake, to conduct a comprehensive, building-by-building inquiry into actual practices. Likewise, I was not asked, and I did not undertake, to address the roles and responsibilities of particular individuals. And I did not, and was not asked to, evaluate present or historical statistical information or computer records regarding the collection, compilation, correction, and reporting (either internally or to the state) of student data; nor did I assess the effect of TPS’s reporting practices on building or district performance on student tests.

I reviewed the applicable statutes and regulations and the ODE Manual. I interviewed many past and present TPS administrators. And I reviewed certain TPS documents related to District policies and practices, although I did not undertake a search for or comprehensive review of e-mails sent between or among TPS administrators.

My work so far has raised many questions. Some of those questions, including several important ones, have not yet been fully answered. I intend to continue seeking those answers, and I will report them when I have them. But the Superintendent asked that I provide him with my preliminary conclusions as part of the District’s commitment to disclose to state officials and the public the facts of the District’s practices. Moreover, the State Auditor has set Monday, August 20, as the

deadline for Districts to “self-report” data-reporting practices that may be within the Auditor’s investigation. Thus, as the Superintendent has requested, I am providing this preliminary report for use, as he sees fit, in connection with self-reporting.

A. Legal and Regulatory Standards and Guidance.

1. Ohio law imposes on every parent of a child of compulsory-school-age who is not employed under an age-and-schooling certificate the obligation to send the child to a school that meets the minimum standards prescribed by the state Board of Education for the full time the school is in session, which may not be less than thirty-two weeks per school year.<sup>1</sup>
2. Consistent with that obligation, Ohio law imposes on school superintendents obligations to monitor student attendance and to intervene upon receiving information that a child of compulsory-school-age has been absent without legitimate excuse for more than ten consecutive days or for at least fifteen total school days. The intervention may under certain circumstances lead to involvement of the county’s juvenile judicial system.<sup>2</sup>
3. In addition to the requirement for intervention, state law provides definitions of habitual truancy and chronic truancy.<sup>3</sup>
4. Ohio mandates a student-testing process that is intended to measure the effectiveness of the state public-education system, school districts, and individual schools in providing instruction and educational advancement to students enrolled in the state’s public schools.
5. The ODE created and operates the Education Management Information System (EMIS) for the purpose of collecting, reporting, verifying, and analyzing student-testing data. Definitions, procedures, and guidelines for the EMIS system are published in a manual that is updated annually and is made available to school administrators to guide their reporting.

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<sup>1</sup> R.C. 3321.04

<sup>2</sup> R.C. 3321.13(B)(2)

<sup>3</sup> “Habitual truant” means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for five or more consecutive school days, seven or more school days in one school month, or twelve or more school days in a school year. Ohio Revised Code Section 2151.011(B)(19)

“Chronic truant” means any child of compulsory school age who is absent without legitimate excuse for absence from the public school the child is supposed to attend for seven or more consecutive school days, ten or more school days in one school month, or fifteen or more school days in a school year. Ohio Revised Code Section 2152.02(D); see Section 2151.011(B)(9)

6. The ODE, the EMIS Manual, and the reporting process place great emphasis on the accuracy of data.
7. Significant consequences for districts and schools flow from the test results, because a central premise of the testing process is that schools and school districts should be held accountable for the results of their instructional programs, as measured by state tests.
8. A necessary corollary of that premise is that schools and district should not be held responsible for the test results of students whom, for whatever reason, the particular school or district has not had the opportunity to affect through instruction.
9. Thus, apart from the intrinsic value of accurate data, it is important that the data on which the state acts with respect to the test results of districts and schools accurately reflect the districts' and schools' actual performance with students actually under instruction.<sup>4</sup>
10. In furtherance of these goals, the EMIS Manual directs districts to include in their testing data only those students who have been continuously enrolled for the academic year and to withdraw students who are not continuously enrolled. The EMIS Manual instructs districts not to include in the student-testing reports students who are withdrawn due to truancy.<sup>5</sup>
11. The Manual addresses the subject of not counting in the year-end testing report the scores of students who, for various itemized reasons, have not been continuously enrolled. In this section, the Manual provides a specific code to be used when a student is withdrawn from the count because of truancy or non-attendance.<sup>6</sup>
12. The Manual does not provide a definition of truancy, nor does it provide guidance about how or when this code is to be used.

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<sup>4</sup> There are, of course, numerous other reasons, both at the state level and at the district and school level, that accurate attendance data is crucial, such as a district's need to make wise and fact-based decisions about the allocation of staff among schools.

<sup>5</sup> Thus, for instance, the ODE stated, in its Frequently Asked Questions on Accountability and Local Report Cards, that "For the 2006-07 school year, the [Full Academic Year] rule states that a student must be enrolled continuously from the end of October count week to May 10<sup>th</sup> for grades 3-8 or March 19<sup>th</sup> for all other grades." The different dates for this standard reflect the different test dates for the respective grades.

<sup>6</sup> Over the years, different iterations of the EMIS Manual have provided differing levels of detail about students who "withdrew due to truancy/nonattendance. For instance, the FY2003 Manual (then called "Guide") includes a chart that directs districts to consider students who "withdrew due to truancy/nonattendance" as "dropouts." See Chapter 2-36. A different, condensed version of this chart appears in the FY11 Manual. See Chapter 2, p. 44 of 199.

## B. TPS practices and ODE Guidance

13. At the end of each school year, TPS, like other Ohio districts, is required to provide to the ODE test results and other student data. The raw data is collected at the state and returned to TPS for review and correction, often called “clean-up,” to eliminate erroneous information and otherwise ensure that the data conforms to the “business rules” for reporting, some of which are set forth in the Manual.
14. This clean-up is mandatory because, among other reasons, certain kinds of errors— often called “fatal errors” – prevent the affected data from being included in the report, thereby leading to inaccurate reporting.<sup>7</sup> Likewise, because of data-entry errors, students who took the test may be inaccurately reported as not having done so, or vice versa. In short, the overarching goal of data accuracy is served by ensuring that districts and schools have the opportunity to review raw data before it is finalized for reporting to the state. Thus, the ODE actively endorses and abets this clean-up process.
15. In the early years of the last decade, senior TPS administrators concentrated on the body of state law that addresses the obligations of schools with respect to monitoring attendance and intervening in the lives of truant students, and reporting. At the same time, the administrators focused attention on the requirements of state law regarding the testing of students and the reporting of test results. And the administrators focused on ensuring that the district maintained accurate student-attendance data for the purpose of making the full range of administrative decisions that depend on such data, such as allocation of resources, assignment of teachers, and the like.
16. As a result of the emphasis on these subjects, the administration determined, based on state statutory law and the content of the EMIS Manual, that ODE intended that certain truant students be withdrawn from school enrollment and not included in state testing.
17. During meetings initially convened and later attended by the ODE for the purpose of bringing together the EMIS staffs of the so-called Urban Eight<sup>8</sup>,

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<sup>7</sup> For example, if a student is inadvertently identified as having attended “365” school days during the year, the system will prevent that student from being included in the testing data.

<sup>8</sup> The Urban Eight are Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown.

- TPS administrators and others sought guidance from the ODE about the reporting of truant students. Guidance was not forthcoming, apparently on the ground that as a matter of policy the ODE staff did not provide such guidance, preferring to leave districts to the content and ambiguity of the EMIS Manual.
18. In the absence of guidance from ODE, TPS adopted a process, centralized at the district administration, of withdrawing students when they met a fixed standard of truancy.
  19. As noted above, state law contains at least three different standards for truancy. In an effort to reconcile these standards and synthesize them into a single standard that led to withdrawal of a student only after the most generous allowances for unexcused absences, the District adopted a two-prong standard. A student would be withdrawn when that student both (i) had five consecutive unexcused absences during the concluding school year, and (ii) had at least twenty total unexcused absences.
  20. The counting and totaling of unexcused called for by this standard began shortly after New Year and ran through March each year until, as described below, the process changed following the 2005-06 school year. This timing ensured that students who met the standard of truancy would be withdrawn before student testing, which took place in March.
  21. Once withdrawn, the student would be re-enrolled during the academic year if (a) a responsible parent went through the prescribed re-enrollment process for the student, or (b) the student re-appeared at school.
  22. The only way a student could be withdrawn for truancy was through the centralized process, applying the prescribed standard, and the only way a student could be re-enrolled was through the centralized process.
  23. The process of withdrawing students who met the standard of truancy, and the process of re-enrolling students for one of the two permitted reasons was concluded by March of the academic year. No withdrawals for truancy, and no reenrollment of truant students was permitted after that.
  24. This centralized process was in place for the 2002-03 academic year.<sup>9</sup>
  25. The administrator who was closely involved in the design and implementation of this process left TPS in the summer of 2006.

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<sup>9</sup> I have not yet been able to determine whether this policy, or a variation of it, was in effect in the preceding year.

26. The administrator's successor began work several months later, so there was no overlap in their work, and there was no training or transition of information on the process of withdrawing truant students in the process.
27. Indeed, it appears the successor was unaware of the process. Therefore, at the end of the 2006-07 school year, TPS did not withdraw truant students and the test scores of those students were included in the student-testing data reported to the State.
28. This change in practice caused a decline in the District's academic-performance rating, which in turn caused senior TPS administrators to look into the reasons for the decline. The administrators learned that truant students had not been withdrawn.
29. In preparing for reporting student-test data for the 2007-08 school year, TPS administrators discussed internally the truancy policy, which was understood to call for the withdrawal of students who met the two-pronged definition of truancy, as well as the possibility of re-enrollment. And they discussed whether that policy complied with state law. These internal discussions included recognition that the practice was in use in many other districts around the State and was openly discussed at meetings of school-district administrators.<sup>10</sup>
30. As a result of these internal discussions, TPS administrators contacted the ODE by phone to seek an opinion as to whether the withdrawal-and-reenrollment practice complied with state law, including the provisions of the ODE manual. During this phone conversation, when a TPS administrator described the practice, she was told that it did not square with the "intent" of the manual. But when the administrator then asked for guidance about how to comply with the "intent" of the manual, she was told that the Department does not give guidance beyond what is stated in the manual. Although the ODE knew, directly from TPS as well as from press reports, of the withdrawal-and-reenrollment practice, no one at ODE told a TPS administrator that the practice should be stopped or that it violated the manual.
31. In the aftermath of the internal discussions and the efforts to seek guidance from the DOE, TPS decided that it would implement the practice of withdrawing and reenrolling students whose absenteeism met the two-prong

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<sup>10</sup> It is notable that in September 2008, the Cleveland *Plain Dealer* published a story detailing the practice of the Cleveland school district and other districts of removing from district performance data the test scores of students with high absenteeism rates. There is no public record of the ODE taking action in response to this news report, a copy of which is attached.

- standard that TPS had earlier established. The identification of students who met the standard was done at year-end as part of the data clean-up process.<sup>11</sup>
32. TPS administrators adopted this policy, including the definition of truancy, and implemented it through instructions given to building principals. These instructions included the rule that the standard for truancy must be applied to all students within the building uniformly and without exception.
  33. The ODE was aware of TPS's policy and did not inform TPS of any objection to it until the recent press coverage, triggered initially by the Columbus *Dispatch's* reporting on the Columbus schools and then the Toledo *Blade's* reporting on TPS's practices, which was caused by the TPS superintendent's voluntary disclosure of the practice and his announcement that he had ordered it be suspended pending review.
  34. Immediately after the current administration became aware of a potential issue with the way TPS had been reporting its student testing data and its practice of year-end withdrawal-and-reenrollment of truant students, TPS counsel sought guidance from the ODE on the practice, in an effort to ensure that the 2012 reporting conformed to ODE's rules as well as state law. To date, TPS has received no response to this request for guidance.

### C. Conclusions

35. The Manual mandates that schools report testing data for only students who are continuously enrolled and directs that schools not include students who are withdrawn because of truancy.
36. Throughout the period covered by this report, senior TPS personnel attempted to obtain guidance from the ODE on how to implement the mandates and directives of the manual, but no such guidance has ever been forthcoming.
37. TPS administrators adopted the two practices described in this report in good faith and, in absence of guidance from ODE, in an effort to report testing data in conformity with state law and the provisions of the EMIS Manual.
38. In an effort to comply with the Manual and apply its directive regarding withdrawals for truancy, TPS administrators adopted a reasonable definition of truancy based on state statutes.

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<sup>11</sup> I have not yet determined why the timing of this determination was set for the end of the school year, or whether administrators were aware at the time that this year-end process differed from the process that had been in place through the 2005-06 school year.

39. Indeed, the definition that was adopted resulted in the exclusion of the test scores of smaller numbers of students than would have been excluded had the District chosen to follow any of the specific statutory definitions of truancy.
40. Neither the TPS practice in place from at least the 2002-03 school year through the 2005-06 school year, nor the TPS practice in place from 2007-08 through 2010-11 violates state law or any provision of the EMIS Manual.

As I said above, I will supplement this report as appropriate, and revise it as necessary, as my investigation continues.

  
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