

3301-103-06

**Application and participation of providers.**

(A) No private provider shall receive scholarship payments from parents pursuant to the autism scholarship program until the private provider is registered with the Ohio department of education. The Ohio department of education shall register any private provider that meets the following requirements:

- (1) A private provider makes application to the Ohio department of education in accordance with rules of the state board of education and guidelines established by the Ohio department of education and that application is approved.
- (2) The private provider indicates, by signing the provider affidavit in writing, its commitment to follow all requirements for a private provider specified in rules 3301-103-01 to 3301-103-07 of the Administrative Code, including but not limited to, the requirements for accepting qualified special education children pursuant to rule 3301-103-03 of the Administrative Code. The provider affidavit shall also include the assurance that the provider is in compliance with all laws that are applicable.
- (3) The private provider meets the minimum standards of the applicable professional organization for individual or non-school providers. The private provider holds, and any employees hold, and any volunteers hold, appropriate credentials from the state board of education or appropriate credentials from a national or state board for their specific professions, and these credentials are related to the individualized education program (IEP) services they will be providing. If the private provider contracts with another provider who will be providing special education and related services to children in the autism scholarship program, the contracted provider and any subcontractors and employees or volunteers of both the contracted and subcontracted providers shall also hold appropriate credentials from the Ohio department of education or credentials from a national or state board for their specific professions.
  - (a) If any of the parties referenced in paragraph (A)(3) of this rule held credentials that are currently revoked by the Ohio department of education, that party cannot be a registered private provider, even though the party may hold credentials from a national or state board for his or her specific profession.
  - (b) If any of the parties referenced in paragraph (A)(3) of this rule holds appropriate credentials from a department of education of a state other than the state of Ohio, those credentials will be recognized as appropriate credentials under paragraph (A)(3) of this rule unless that party held credentials that are currently revoked by the Ohio department of education or by the department of education of another state.

(c) In addition to the listed providers of intervention services outlined in section 3310.41(E) of the Revised Code, intervention services under the autism scholarship program may also be provided by an intervention specialist licensed by the state board.

- (4) The private provider is physically located within the boundaries of the state of Ohio, and children served by the private provider shall be served within the state of Ohio.
- (5) The private provider is in compliance with sections 3319.39, 3319.391, and 3313.392 of the Revised Code regarding background checks as if it were a school district for any staff licensed by the Ohio department of education. For all other staff the private provider has on file, prior to providing any special education and related services to children participating in the autism scholarship program, a current criminal records check from the superintendent of the Ohio bureau of criminal identification and investigation pursuant to rule 109:5-1-01 of the Administrative Code. Current criminal records checks shall be on file for all owners, employees, contractors, and volunteers of a private provider. Each owner, employee, contractor, and volunteer of a private provider shall have on file a criminal records check that is not more than one year old on the date that the person becomes an owner, employee, contractor, or volunteer of the private provider. Thereafter, each owner, employee, contractor, or volunteer of a private provider shall undergo a criminal records check at least every five years from the date of the last criminal records check. A criminal records check is current if it meets the timeframes specified in this paragraph.

For purposes of paragraph (A)(5) of this rule, contractor includes any person who is under contract with a private provider and whose work involves routine interaction with a child in the autism scholarship program or regular responsibility for the care, custody, or control of a child in the autism scholarship program. For purposes of paragraph (A)(5) of this rule, volunteer includes any person whose activities involve unsupervised access to a child. "Unsupervised access" to a child has the same meaning as in section 109.574 of the Revised Code.

The current criminal records check shall not indicate that any owner, employee, contractor, or volunteer of the private provider has been convicted of or pleaded guilty to a violation of any of the sections of law described in division (B)(1) of section 3319.39 of the Revised Code.

An owner, employee, contractor, or volunteer of a private provider who holds a license consistent with the meaning of license in division (A) of section 3319.31 of the Revised Code shall also meet all applicable requirements for

criminal records checks that apply to a holder of that license. An owner, employee, contractor, or volunteer of a private provider who holds a license or certificate under another section of law shall also meet any requirements for criminal records checks that apply to a holder of that license or certificate. An owner, employee, contractor, or volunteer of a private provider who is a driver of a school bus or motor van consistent with the meaning of a driver of a school bus or motor van under section 3327.10 of the Revised Code shall also meet all applicable requirements for criminal records checks under section 3327.10 of the Revised Code.

As part of the initial application for registration and subsequent annual reapplications for registration, a private provider shall submit to the Ohio department of education an affidavit assuring the Ohio department of education that a current criminal records check, as described above, is on file for all owners, employees, contractors, and volunteers of the private provider and assuring the department that the current criminal records checks do not show that any owner, employee, contractor, or volunteer of the provider has been convicted of or pleaded guilty to a violation of any of the sections of law described in division (B)(1) of section 3319.39 of the Revised Code.

- (6) The affidavit referenced above also shall assure the department that the provider has a written policy addressing the private provider's practices to ensure that said private provider does not discriminate on the basis of race, color, religion, sex, gender, ethnicity, natural national origin, religion, gender, disability, or age age, or ancestry.
- (7) The private provider demonstrates fiscal soundness the capacity to provide services under the autism scholarship program. A private provider shall demonstrate fiscal soundness its capacity to provide services under the autism scholarship program by meeting the following requirements:
- (a) Being in operation for at least one full school year prior to enrolling children participating in the autism scholarship program;
  - (b) Providing the department of education with documentation a written statement confirming that the private provider has adequate liability and property and casualty insurance;
  - (c) Having no outstanding claims for recovery from the auditor of state;
  - (d) Providing the parent with a fee schedule and description of the special education and related services that the private provider will be providing as part of the autism scholarship program and, upon request,

making the fee schedule available to the Ohio department of education;

(e) Verifying in a written statement filed with the Ohio department of education that the owner has sufficient capital or credit in order to operate during the upcoming school year to serve the number of children accepted, taking into consideration expected revenues from fees charged and from other sources; and

(f) Filing with the Ohio department of education one of the following: a surety bond or letter of credit for an amount equal to the scholarship funds for that school year.

(i) a bond in favor of the department for financial loss to the department caused by the provider or one of the provider's employees related to the provider's participation in the autism scholarship program for an amount equal to one-twelfth of the scholarship funds received for that prior school year or ten thousand dollars, whichever is greater, up to a cap of two hundred and fifty thousand dollars. The bond must be maintained in effect for at least one year after the date on which the provider ceases to participate in the autism scholarship program or until resolution of all outstanding claims. The bond shall be continuous. The bond shall, however, include a provision for cancellation, subject to a notice period of 30 days with notice provided to the provider and to the department. Regardless of the amount of claims made against the bond and the number of periods the bond covers, the maximum liability under the bond is the penal sum;

(ii) a letter of credit for an amount equal to one-twelfth of the scholarship funds received for the prior school year or ten thousand dollars, whichever is greater, up to a cap of two hundred and fifty thousand dollars. The letter of credit must be maintained in effect for at least one year after the date on which the provider ceases to participate in the autism scholarship program or until resolution of all outstanding claims;

(iii) an agreement that authorizes the department to offset any amounts due the department under the autism scholarship program against monies that would otherwise be distributed to that provider in accordance with section 3317.063 of the Revised Code and 3301-40 of the Administrative Code during the provider's participation in the program. The authorization must be maintained in effect for at least one year after the date on which the provider ceases to participate in the autism scholarship program or until resolution of all outstanding claims.

(g) The department may conditionally approve a provider that has not yet satisfied the criteria in paragraphs (A)(7)(f) and reimburse such a provider for services provided to students receiving services through the autism scholarship program. Within sixty days of the effective date of these rules, a provider conditionally approved in accordance with this paragraph shall file with the department one of the items outlined in paragraph (A)(7)(f).

(8) The private provider meets all applicable state and local health and safety codes.

(9) The private provider provides quarterly reports to the parent and to the child's school district of residence. These reports shall include but not be limited to the following:

(a) The child's progress toward meeting the annual goals stated on the child's current IEP and how the child's progress is being measured; and

(b) The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

~~(10) The private provider complies with all applicable state and federal laws regarding the delivery of services to children with disabilities, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, August 21, 1996, 42 U.S.C. 1320d-2 (HIPAA); the American with Disabilities Act of 1990, January 1990, 42 U.S.C. 12213 (ADA); Families Educational Rights and Privacy Act of 1974, August 1974, 20 U.S.C. 1232g (FERPA) and related federal regulations at 34 C.F.R Part 99 (2000); section 3319.321 of the Revised Code; the Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1998, August 1998, 29 U.S.C. 701 (2005); the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. 1400, Public Law 108-446 of the 108th Congress, December 3, 2004 (IDEA) and related federal regulations at 34 C.F.R. Part 300 (October 13, 2006); and Chapter 3323. of the Revised Code and related state rules in Chapter 3301-51 of the Administrative Code (July 1, 2008).~~

(B) A private provider, who wishes to continue to provide special education and related services to children in the autism scholarship program in the succeeding fiscal year, must submit a completed new application for the succeeding year that includes an affidavit, prescribed by the Ohio department of education, in which the private provider swears or affirms that the private provider continues to meet all requirements for registration. The Ohio department of education must receive all applications and affidavits by July first of the current year from private providers who wish to participate in the autism scholarship program for the current program

year that begins July first.

- (C) A registered private provider will participate in an on-site monitoring visit upon the request of the Ohio department of education.
- (D) The registered private provider shall make their written policies and practices readily available to all parents in the state of Ohio requesting this information and will do so without charge to the parent.
- (E) The Ohio department of education may revoke the registration of a registered private provider if the department of education determines that the registered private provider is in violation of any of the provisions of section 3310.41 of the Revised Code, rules 3301-103-01 to 3301-103-07 of the Administrative Code, or program guidelines established by the Ohio department of education. Notice of the department's intent to revoke will be provided in accordance with Chapter 119. of the Revised Code. At the discretion of the department, the department may allow a provider the opportunity to complete a corrective action plan to correct non-compliance in lieu of revoking the provider's registration.
- (F) If a private provider's registration is revoked, the private provider is entitled to and may request a hearing under Chapter 119. of the Revised Code.
- (G) All private providers that participate in the scholarship program must be approved and registered by the Ohio department of education. The Ohio department of education will make a list of all registered private providers available to any parent within the state of Ohio.
- (H) An alternative public provider for the autism scholarship program may agree to enroll a child in the alternative public provider's special education program if the child's parent would owe fees for the services provided to the child by the alternative public provider.
  - (1) An alternative public provider who agrees to participate in the autism scholarship program shall register with the ~~send a letter to the office for exceptional children, Ohio department of education, stating its intention to do the following:~~
    - (a) ~~Serve as an alternative public provider for the autism scholarship program; and~~
    - (b) ~~Implement the child's IEP in accordance with the provisions of the autism scholarship program.~~

- (2) An alternative public provider which is a school district that is not the school district in which the child is entitled to attend school shall meet all requirements that apply to a school district.
- (3) An alternative public provider that is a public entity other than a school district shall meet all requirements that apply to that public entity.
- (4) The registration requirements that apply to a registered private provider do not apply to an alternative public provider, except an alternative public provider shall provide quarterly progress reports as required by paragraph (A)(9) of this rule and shall submit required invoices~~cost reports~~. An alternative public provider may claim reimbursement only for the costs of the provider's services that implemented the child's IEP.

Effective:

Five Year Review (FYR) Dates: 04/07/2017

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Certification

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Date

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