

Guide to the Rule-Making Process of the Ohio Department of Education and the Ohio State Board of Education

I. Introduction and Mission Statement of ODE and the Ohio State Board of Education:

Article VI, Section 4 of the Ohio Constitution provides that "[t]here shall be a state board of education which shall be selected in such manner and for such terms as shall be provided by law." Subsequently, legislation was enacted which created the State Board and authorized it to exercise general supervision of the system of public education in Ohio. (Ohio Revised Code Sections 3301.01 and 3301.07.) The Ohio Constitution (Article VI, Section 4) requires the State Board of Education to appoint a Superintendent of Public Instruction, who serves as the "executive and administrative officer of the state board of education..." Ohio Revised Code Section 3301.11. The State Superintendent also serves as the chief executive officer of the Ohio Department of Education. (Ohio Revised Code Sections 3301.11 and 3301.13.) The State Board is empowered to adopt rules necessary for carrying out its legal functions. (Ohio Revised Code Sections 3301.07 and 3301.13.)

This Guide provides a general overview of the rule-making process followed by the Ohio Department of Education (ODE) and the State Board of Education, and was created in compliance with the provisions of Ohio Revised Code section 119.0311. The purpose of this Guide is to assist members of the public who participate, or who may wish to participate, in ODE's and the State Board's rule-making process.

The mission of ODE and the State Board of Education is as follows:

- **Raise expectations:** set clear and high expectations for what all students should know and be able to do;
- **Build Capacity:** Make sure that educators have the skills, knowledge, and resources to get students to the higher expectations. Foster the ability of families and communities to help students succeed;
- **Improve Results:** Measure, publicize, and reward results and hold all educators and students responsible for them.

II. Major Functions of ODE and the Ohio State Board of Education:

The Department of Education is the administrative unit and organization through which the policies, directives, and powers of the State Board of Education and the Superintendent of Public Instruction are administered. The State Board of Education is the policy-making body for elementary and secondary education in Ohio. Eleven members are elected from eleven geographic districts in the state, and eight are appointed

by the Governor, subject to Senate confirmation, for four-year terms. In addition to the nineteen elected or appointed members, the chairperson of the Senate Education Committee, and the chairperson of the House Education Committee, are nonvoting, ex officio members of the Board.

The Superintendent of Public Instruction is appointed by the Board, and serves as the Board's secretary. The Superintendent of Public Instruction serves as the Chief Administrative Officer of the Department of Education and exercises general supervision of the Department. The State Board of Education and the Department of Education have authority in numerous areas affecting public education, including, but not limited to, establishing academic content standards, establishing operating standards for Kindergarten through Twelfth Grade, licensing teachers and administrators, administering and supervising the allocation and distribution of state and federal funds for public school education, and setting procedures and guidelines for the education of students with disabilities. For a list of additional powers and duties of the State Board of Education and the Department of Education, see Ohio Revised Code sections 3301.07 and 3301.13.

III. ODE Organization:

To assist ODE and the State Board in fulfilling its mission, ODE is comprised of six Centers, with each Center containing designated offices. The Centers and Offices are listed below:

1. Center for the Superintendency: This Center contains the following offices:

- Office of Chief of Staff
- Office of Board Relations
- Office of Budget and Governmental Relations
- Office of Communications
- Office of Development
- Office of Information Technology
- Office of Legal Counsel
- Office of Policy Research and Analysis
- Office of Internal Operations and Risk Management
- Office of Customer Service
- Office of Department Accounts
- Office of Document Management Services
- Office of Human Resources
- Office of Internal Audit
- Office of Organizational Development
- Office of Community Schools

2. Center for Curriculum and Assessment: This Center contains the following offices:

- Office of Assessment
- Office of Career-Technical and Adult Education
- Office of Curriculum and Instruction

3. Center for Finance and School Accountability: This Center contains the following offices:

- Office of Federal and State Grants Management
- Office of School Accountability
- Office of School Finance

4. Center for School Reform and Options: This Center contains the following offices:

- Office for Reform and Federal Student Programs
- Office for Regional School Improvement Services

5. Center for Students, Families and Communities: This Center contains the following offices:

- Office of Center Operations
- Office of Child Nutrition Services
- Office of Early Childhood Education
- Office of Exceptional Children
- Office of Ohio Literacy
- Office of OhioReads
- Office of Supportive Learning Environments

6. Center for the Teaching Profession: This Center contains the following offices:

- Office of Certification/Licensure
- Office of Educator Preparation
- Office of Professional Conduct
- Office of Professional Development
- Office of Recruitment and Retention

IV. ODE and State Board of Education Rule-making Authority:

The Superintendent of Public Instruction makes a recommendation to the State Board of Education as to whether the State Board should adopt, amend and/or rescind an administrative rule. The State Board of Education has rule-making authority under Chapter 119 of the Ohio Revised Code, and is authorized to promulgate (adopt, amend and/or rescind) administrative rules necessary to carry out its duties and responsibilities as outlined in Ohio law. These responsibilities and duties are generally addressed in Title

33 (Education) of the Ohio Revised Code. All rules of the State Board of Education can be found in Chapter 3301 of the Ohio Administrative Code.

VI. ODE and State Board of Education Rule-making Process:

- **Internal ODE Process:** Prior to the initiation of the formal rules process, ODE determines whether a rule needs to be adopted, amended or rescinded. Most often this is done in response to legislation enacted by the General Assembly. Once it is determined that a rule needs to be adopted, amended or rescinded, the specific office responsible for the rule prepares a draft, and may seek input from other ODE offices and outside input from external stakeholders such as school districts, parents and others who would be effected and/or interested in the rule. Based on such input, changes may be made to the rule, and the rule is then submitted to the Legal Office for review.
- **Rule-making Process of the State Board of Education:** Once the rule is in final draft form, it will be submitted to the State Board of Education for initial approval. If the State Board initially approves the rule, it will adopt a Resolution of Intent to Consider the Rule, and will direct ODE to file the rule with the Joint Committee on Agency Rule Review (JCARR), the Legislative Service Commission (LSC) and the Secretary of State, and to schedule the rule for a public hearing.
- **Filing the Rule:** After the State Board of Education adopts a Resolution of Intent to consider the rule, the rule must be filed with JCARR, LSC and the Secretary of State, and cannot be finally adopted until JCARR's jurisdiction has ended, which is a period of 65 days from the filing date. See below for further discussion regarding JCARR.
- **Public Rule Hearing:** The public rule hearing must be held no earlier than the thirty-first nor later than the fortieth day after the rule is filed with JCARR. Public notice of the hearing is provided to the Register of Ohio at least thirty days before the hearing date. The notice will be published on the Register's web site located at www.registerofohio.state.oh.us. In addition, the State Board also publishes its public hearing notices in the Cleveland Plain Dealer, the Columbus Dispatch, and the Cincinnati Enquirer. The public notice includes the following:
 - ✓ The date, time, and place of the hearing;
 - ✓ A statement of the reason or purpose for adopting, amending or rescinding the rule;
 - ✓ A synopsis of the proposed rule, amendment, or rule to be rescinded; and
 - ✓ A statement of the Board's intention to consider adopting, amending or rescinding the rule.

The notice of the rule hearing and the text of the rule is made available to anyone who requests it from ODE or from the members of the State Board. On the designated date,

time and place as published, the rule hearing will take place. The hearing takes place before the members of the State Board of Education and is transcribed by a court reporter. Members of the public are welcome to attend the rule hearing and are encouraged to testify before the Board on issues they have concerning the rule. Board members are present to hear and consider the testimony given before they make a final decision regarding the rule.

Individuals who attend the rule hearing are asked to sign in and fill out a form if they wish to testify. The individuals are then called to testify by the Chair of the rule hearing, and are provided five minutes to testify regarding the rule. The time limit is to allow all individuals the opportunity to be heard, but may be extended at the discretion of the Chair. In addition, Board members may ask questions of the individual and will accept testimony in writing.

- **Amendments:** Subsequent to the initial filing of the proposed rule, the State Board of Education has the prerogative to amend the proposed rule. If an amendment is made, the amended rule is filed with JCARR, LSC and the Secretary of State. JCARR's period of jurisdiction is extended and the amendment is subject to a JCARR hearing (described below).
- **Final Adoption of the Rule:** After the public hearing takes place and after JCARR's jurisdiction expires, and JCARR does not take action to invalidate the rule, as described below, the State Board of Education may take action to adopt the rule, by passing a Resolution. If this occurs, the rule is then filed in final form with JCARR, LSC and the Secretary of State, and may take effect no sooner than the tenth day after the day on which the rule is filed in final form, or at any later date designated by ODE or the State Board.
- **Five Year Review:** Before filing a new rule in final form with JCARR, ODE assigns a review date to the rule in accordance with Ohio Revised Code section 119.032. This review date is not more than five years from the effective date of the rule. Prior to the review date, ODE will review the rule to determine whether the rule should continue without amendment, be amended, or be rescinded. If ODE determines that no change to the rule is necessary, it will file the rule with JCARR, LSC and the Secretary of State with both the current and next review date, which will not be later than the five years after the rule's last review date. If ODE determines that the rule should be amended or rescinded, ODE will follow the rule-making process as outlined above.

VII. Public Participation in the Rule-making Process: Members of the public are welcome to attend the meetings of the State Board of Education and the public rule hearings. At each State Board meeting, which usually occurs monthly, members of the public have the opportunity to address the board on any topic they choose, or on matters that are on the Board agenda for a vote. Copies of the rule that is being considered by the Board are made available to those who make a request. As indicated above, before the rule is submitted to the State Board, ODE may seek input from external stakeholders for

review and comment. In addition, anyone who wishes to comment on the rule may do so at the rule hearing, or may provide comments or concerns in writing to ODE and to members of the State Board. Finally, members of the public are provided the opportunity to testify at the JCARR hearing that occurs on a date after the State Board's public hearing, as discussed below.

VIII. The Joint Committee on Agency Rule Review (JCARR): JCARR consists of five State Representatives and five State Senators. The primary function of JCARR is to review proposed new, amended, and rescinded rules to ensure that:

1. The rules do not exceed the scope of the rule-making agency's statutory authority;
2. The rules do not conflict with a rule of that agency or another rule-making agency;
3. The rules do not conflict with the intent of the legislature in enacting the statute under which the rule is proposed; and
4. The rule-making agency has prepared a complete and accurate rule summary and fiscal analysis of the proposed rule, amendment, or rescission.

If JCARR determines that one of the above criteria has not been met, JCARR has the authority to recommend to the General Assembly that the rule or part of the rule be invalidated. In addition to the public hearing held by the State Board of Education, JCARR holds a public hearing on the rule, which occurs on a date after the State Board rule hearing. Members of the public have the opportunity to address JCARR during the hearing regarding the rule. After the hearing has taken place, and if JCARR has determined that the rule does not violate any of the criteria listed in paragraphs 1 through 4 above, the State Board may, at its next meeting, vote to adopt the rule. If the rule is adopted, ODE will file the rule in final form with JCARR, LSC and Secretary of State, as discussed above.

IX: ODE Contacts: The Legal Office of the Department of Education generally oversees the rule-making process of ODE and the State Board of Education. Questions, concerns or comments regarding the rule-making process or a particular rule filing, may be directed to:

Ohio Department of Education
Office of Legal Counsel
25 South Front Street, 7th Floor
Columbus, Ohio 43215
Telephone: 614-466-4705
Facsimile: 6140728-5453
Web Site: www.ode.state.oh.us