

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Education, Office of Quality School Choice

Regulation/Package Title: Standards for measuring sponsor compliance with applicable laws and rules

Rule Number(s): 3301-0102-08

Date: March 15, 2016

Rule Type:

☐ New

☒ Amended

☐ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The State Board of Education proposes to rescind and file new O.A.C. 3301-102-08 to align the compliance component of the sponsor evaluation system with recent changes in law. The current version of the regulation requires the Department of Education to measure a sponsor's compliance with a subset of laws and rules applicable to sponsors. However, recent changes in law now require the Department of Education to measure a sponsor's compliance with **all** laws and rules, not just a subset of applicable laws and rules, starting with the 2015-2016 sponsor evaluations.

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The proposed revision to the rule complies with this new legal requirement by requiring the following:

- (a) The Department of Education shall annually publish a list of all applicable laws and rules subject to review on its website (**Paragraph (C)**);
- (b) At the beginning of each school year, the sponsor will provide ODE with a description of how it complies with each applicable law and rule (**Paragraph (D)**);
- (c) Throughout the school year, the sponsor will upload documentation to ODE for itself and each of its schools, responsive to each item and confirming the sponsor's compliance (**Paragraph (D)**);
- (d) At the end of the school year, the sponsor will certify to ODE that it complied with each law and rule (**Paragraph (E)**);
- (e) ODE will randomly select items from the list of all rules and laws; if items related to monitoring school compliance are selected, ODE will randomly select a school (representing at least one and up to 10% of the number of sponsored schools) to review those data (**Paragraph (F)**);
- (f) ODE will determine the percent of reviewed items whose compliance was confirmed (**Paragraph (G)**); and
- (g) ODE will calculate a rating and inform the sponsor (**Paragraph (H)**).

Sponsors will receive a rating of "Full Compliance," "Satisfactory Compliance," "Partial Compliance," "Needs Significant Improvement," or "Non-Compliance" based on the results of the Department of Education's review. This rating on the compliance component of the sponsor evaluation system is then incorporated into an overall sponsor rating of "Exemplary," "Effective," "Ineffective," or "Poor." The State Board of Education lacks rulemaking authority over the other components of the sponsor evaluation system, as well as the calculation of the overall rating for the sponsor evaluation system. Instead, these other ratings are calculated in accordance with law.

The overall rating from the sponsor evaluation system is used by the Department of Education to enhance and supports the monitoring, oversight and technical assistance it provides for sponsors of community schools in accordance with O.R.C. 3314.015(A).

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

O.R.C. 3314.016(B)(5): "Not later than July 1, 2013, the state board of education shall adopt rules in accordance with 119. of the Revised Code prescribing standards for measuring compliance with applicable laws and rules under division (B)(1)(c) of this section.

O.R.C. 3314.016(B)(1): "~~For purposes of this section~~ Beginning with the 2015-2016 school year, the department shall develop and implement an evaluation system that annually rates

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and assigns an overall rating to each entity that sponsors a community school based on the following components ... (c) Compliance with all applicable laws and administrative rules by an entity that sponsors a community school.”

Please note, underline and strikethrough sections denote changes to O.R.C. 3314.016 made in Am. Sub. H.B. 2 of the 131st General Assembly.

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

No. The rule does not implement a federal requirement nor is it relevant to the state’s relationship to federal programs. The rule pertains to the department’s oversight of sponsors carrying out their duties.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The proposed regulation does not implement a federal requirement, and therefore does not exceed a federal requirement. However, the Ohio Department of Education was selected as a recipient of a grant for state education agencies under Charter School Program through the U.S. Department of Education. In its grant application, the Ohio Department of Education committed itself to awarding grants to newly-established site-based community schools if the sponsors of such community schools received an overall rating of “exemplary” or “effective” on the most recent sponsor evaluations. Modification of the proposed regulation may impact the ability of the Ohio Department of Education to implement its Charter School Program grant through delay or rescission of the grant award by the U.S. Department of Education.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The department is required by Ohio law to implement a sponsor evaluation system that rates sponsors based on three components: the academic performance of students, adherence to quality sponsoring practices, and compliance with all applicable laws and administrative rules. The State Board of Education is required by Ohio law to adopt administrative rules governing evaluation of a sponsor’s compliance with all applicable laws and administrative rules. Beyond compliance with state law, the proposed administrative rule also provides sponsors with clear guidance as to how the Department of Education will evaluate the sponsor’s compliance with all laws and administrative rules.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

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The ultimate goal of the sponsor evaluation system, including the compliance component addressed by the proposed regulation, is improved outcomes for community schools and students. Specifically, the Department of Education expects fewer fiscal problems and improved academic performance of community schools and students due to improved compliance with rule and law.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Independent Advisory Panel: Established by the former Superintendent of Public Instruction to review the make recommendations concerning the sponsor evaluations system. The panel included a school district superintendent, an attorney, and a certified public accountant familiar with audits of governmental entities. The independent Advisor Panel, along with two members of the State Board of Education, attended XX presentations from staff at the Department of Education regarding each component of the sponsor evaluation system.

State Board of Education: The independent Advisory Panel presented its recommendations concerns the sponsor evaluation system to the State Board of Education. Two members of the State Board of Education participated in the presentations to the independent Advisory Panel.

Sponsors of Community Schools: Sixty-five (65) entities currently sponsor community schools in the state of Ohio and would be directly subject to this regulation. The overwhelming majority of these entities are governmental entities such as school districts and educational service centers. However, seven (7) of the entities currently sponsoring community schools are non-profit corporations.

The recommendations of the independent Advisory Panel were published on the ODE website for comment. Sponsors were also permitted to offer public comment regarding the recommendations of the independent Advisory Panel during a State Board of Education meeting. The Department of Education forwarded all sponsors of community schools a copy of the proposed administrative rule and requested feedback. The Department of Education sent every sponsor of community schools separate correspondence requesting information regarding any adverse financial impact associated with adoption of the proposed administrative rule.

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Community Schools: The proposed rule was posted on the Department of Education website for comment. Community schools were given the opportunity to comment on each paragraph of the rule.

Community School Operators: The proposed rule was posted on the Department of Education website for comment. Community school operators were given the opportunity to comment on each paragraph of the rule.

Members of the Public: The proposed rule was posted on the Department of Education website for comment. Members of the public were given the opportunity to comment on each paragraph of the rule.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Public comments were made at the December State Board meeting. Some stakeholders raised concerns about the broadening of the rule's scope to include all laws and rules pertaining to sponsors. While the original rule had a more limited scope, the proposed administrative rule aligns with changes in law that require evaluation of the sponsor's compliance with all applicable laws and administrative rules, not just of subset of the applicable laws and rules related to monitoring and oversight of community schools operations.

Online comments were made by 193 respondents, representing various constituencies as listed below.

Which of the following best describes you?		
Answer Options	Response Percent	Response Count
I am submitting comments on behalf of a community school sponsor.	8.8%	17
I am submitting comments on behalf of a community school or management company.	7.3%	14
I am submitting comments on behalf of a traditional public school, district, or ESC.	23.8%	46
I am submitting comments on behalf of a professional organization.	2.6%	5
I am submitting comments as an individual citizen.	40.4%	78
I prefer to remain anonymous.	17.1%	33
<i>answered question</i>		193

Seventeen (17) of the responders identified themselves as commenting on behalf of a sponsor. Of these seventeen (17) responders, three (3) represent non-profit corporations that

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currently sponsor community schools, the subset of sponsors regarded as businesses. No comments received in the survey related to the cost of complying with the rule; the majority were about process (106) and the balance were comprised of opinions and questions.

To more directly seek input on the cost of complying, the Department of Education sent all sixty-five (65) sponsors a request for information regarding any adverse financial impacts associated with adoption of the proposed administrative rule.

Of the seven (7) non-profit corporation sponsors, all responded that their operating costs would increase. One sponsor, which currently oversees a portfolio of forty-eight (48) community schools, said that it would need to hire additional staff. However, the sponsor did not provide any information regarding estimated costs associated with hiring those staff. Other sponsors, which currently oversee portfolios of six (6) to forty-nine (49) community schools estimated the cost to implement the requirements in the proposed administrative rule as ranging from \$30,000 to \$285,857 in the first year. For this subset, the estimated average cost per sponsored community school was \$5,990, with a range of \$3,409 to \$11,033 per sponsored community school.

However, it is important to note that any estimated cost increases would be incremental. Ohio law already required sponsors of community schools to monitor a community's compliance with all laws applicable to the school. Further, sponsors were already required to respond in a timely manner to reasonable requests from the department for information, data, and documents – including documentation to support its monitoring of a community school's compliance with laws. During the 2014-2015 compliance review, sponsors provided documentation supporting compliance monitoring for up to forty-four (44) different laws and administrative rules. Although the amount of documentation requested for compliance review will increase under the proposed regulation, ODE is providing the list of compliance items so that sponsors can begin collecting and reviewing this documentation within an estimated five months in order to fulfill their long-standing obligations under Ohio law.

Only six (6) of the fifty-eight (58) governmental entities currently sponsoring community schools responded. One sponsor, which currently oversees a portfolio of eight (8) community schools, stated it was unsure about any cost impact. Two sponsors, overseeing a portfolio of one community school each, said that there would be no increase in operating costs associated with the proposed administrative rule; a third sponsor said there would be an increased operating cost, but provided no specific estimates regarding those costs. Two other public sponsors, which currently oversee portfolios of three (3) community schools each, estimated an increase of operating costs of \$2,500 and \$6,800, respectively.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

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The department is not aware of any scientific data regarding a sponsor evaluation system and specifically, rating how well a sponsor does in complying with all applicable laws and administrative rules.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The agency did not consider alternative regulations. The department is required by Ohio law to implement a sponsor evaluation system that rates sponsors based on three components: the academic performance of students, adherence to quality sponsoring practices, and compliance with **all** applicable laws and administrative rules. The State Board of Education is required by Ohio law to adopt administrative rules governing evaluation of a sponsor's compliance with all applicable laws and administrative rules.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

The proposed rule is performance-based in the sense that the sponsor has to demonstrate its compliance and based upon that demonstration, the sponsor will receive a rating. Under Ohio law, the sponsor evaluation system, itself, is a "performance-based" system in that highly-rated sponsors are rewarded with incentives, including relief from some requirements in law and/or administrative rule. On the other hand, poorly-rated sponsors are subject to progressive sanctions up to and including revocation of the authority to sponsor community schools.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

Ohio law provides that the Department of Education is responsible for the oversight of any and all sponsors of community school. The Department of Education reviewed the administrative rules adopted by the State Board of Education and itself and determined that no other administrative rules speak to standards for measuring sponsor compliance with all applicable laws and rules.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The department has held a number of webinar trainings over the past several years about the sponsor evaluation process. Each week, beginning February 5, 2016 through March 9, 2016, the department provided component-based webinars. Following the webinar, each sponsor is

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sent a copy of the PowerPoint, all the documents that will be used in that component's review and a link to a recording of the presentation on YouTube. The presentations and materials are also available on the department's website. In addition, the department is and will engage in one-on-one consultations sponsors about all components of the sponsor evaluation. The department will also ensure that any staff or contractors participating in the assessment of a sponsor's compliance with all applicable laws and administrative rules are trained and follow a standard protocol.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Sixty-five entities currently sponsor community schools. Seven of those entities are non-profit corporations. These seven non-profit corporations oversee approximately half of the community schools currently operating in the state of Ohio.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

There are no fees or fines with respect to the rule. As noted above, sponsors that are non-profit corporations believe they will experience an increase in operating costs associated with providing the supporting documentation required by the proposed administrative rule. While these sponsors provided estimates of the cost to implement the requirements in the proposed administrative rule, the information shared did not provide a context for the impact or scope of these costs on the sponsors' overall business costs. These cost estimates also did not distinguish between initial and recurring costs, which, as more fully stated below, are expected to reduce substantially following initial implementation.

Additionally, sponsors may negotiate in the community school contract to collect up to three (3) percent of the revenues the community school receives for the purpose of providing monitoring, oversight, and technical assistance. This revenue may be used by sponsors to cover the costs to ensure compliance with the proposed regulation. However, because the amount a sponsor receives under the contract varies based on community school enrollment and the percentage negotiated, it is unclear how these additional costs relate to the current costs associated with a sponsor fulfilling its

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contractual and legal requirements. It is likely that sponsors will incorporate the cost of compliance with the proposed regulations during future negotiations with community schools. Further, sponsors with the largest portfolio of community schools may benefit from economies of scale, particular after initial implementation of the proposed regulation.

Finally, the Department of Education has taken several proactive steps to minimize any perceived adverse impacts to sponsors. The Department of Education has developed an online reporting system to report the compliance items associated with the proposed regulation. This online reporting system was developed at no cost to sponsor and the use of this technology is expected to reduce costs to sponsors following initial implementation of the proposed regulation and provide better notice to both sponsors and community schools of their obligations under law and administrative rule.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

As noted above, of the seven (7) non-profit corporation sponsors, all responded that their operating costs would increase. One sponsor, which currently oversees a portfolio of forty-eight (48) community schools, said that it would need to hire additional staff. However, the sponsor did not provide any information regarding estimated costs associated with hiring those staff. Other sponsors, which currently oversee portfolios of six (6) to forty-nine (49) community schools estimated the cost to implement the requirements in the proposed administrative rule as ranging from \$30,000 to \$285,857 in the first year. For this subset, the estimated average cost per sponsored community school was \$5,990, with a range of \$3,409 to \$11,033 per sponsored community school.

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oversee portfolios of three (3) community schools each, estimated an increase of operating costs of \$2,500 and \$6,800, respectively.

As stated above, to ease the reporting burden, the department has implemented an online reporting system that sponsors can access without charge, and organized the system around documents requested of the sponsor by the department. Once in place, ongoing maintenance of the document uploading should decline significantly. Further, this online reporting system will allow the Department of Education to be more responsive to issues raised by sponsor and/or community schools, as well as other groups that oversee community schools, such as the Ohio Auditor of State.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The State Board of Education is required by Ohio law to adopt administrative rules governing evaluation of a sponsor's compliance with **all** applicable laws and administrative rules. This change in law severely limits the ability of the State Board of Education to minimize or reduce the perceived adverse impact to the regulated business community.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. There are no such avenues available in statute and no authority given to the department to make alternative means of compliance available.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Not applicable. There are no associated fines or penalties for paperwork violations.

18. What resources are available to assist small businesses with compliance of the regulation?

There are numerous resources available to sponsors to assist them in understanding their obligations under rule and law. One of the primary functions of ODE's Office of Quality School Choice is providing general information, guidance, and technical assistance regarding all aspects of sponsorship and community schools, as well as development activities arising from the evaluation results. Additionally, other offices at the department are available for

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content specific assistance. The department, by itself and in partnership with several statewide organizations serving the community school population, provides information products, newsletters, content specific updates, webinars and in-person workshops on topics related to overseeing community schools. These resources are all provided at no cost to the sponsors of community schools. Ohio Association of Charter School Authorizers, Ohio Alliance of Public Charter Schools, the National Association of Charter School Authorizers and the U.S. Department of Education also serve as resources to the community school population.