

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Department of Education

Regulation/Package Title: Autism Scholarship Program

Rule Number(s): 3301-103-01, 3301-103-02, 3301-102-03, 3301-103-04, 3301-103-05,
3301-103-06, and 3301-103-07

Date: December 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☐ Rescinded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.

Ohio law required the State Board of Education to adopt rules prescribing procedures and deadlines for parents to apply for the Autism Scholarship Program, standards for participating registered

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private providers, and procedures for approval of entities as registered private providers. These administrative rules are scheduled for review and revision under five-year rule review process.

Generally, the proposed amendments seek to do a number of things:

- Rescind portions of the rules that simply restated the statute;
- Specify the deadlines for parents to apply for a scholarship for an eligible student;
- Update the reporting requirements to accurately reflect ODE's shift to an electronic application process for both parents and providers; and
- Establish clear guidance as to the documentation required from private providers to demonstrate fiscal soundness.

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

O.R.C. 3310.41(E)

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 proposed regulation implements a program created exclusively under state law.

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

Not applicable. The proposed regulation implements a program created exclusively under state law.

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 State Board of Education was required to adopt administrative rules governing the Autism Scholarship Program to comply with state law. As such, this regulation establishes the process and procedure to obtain a state funded scholarship for certain students to receive special education and related services from a provider other than their resident school district. The regulation also establishes the process and procedure to approve providers of special education and related services for the program.

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

Participating scholarship providers and participating families complete satisfaction surveys annually. Survey information drives program improvement.

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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.

In addition to seeking general comments and feedback from the public, the Department of Education sought comment and feedback from the following groups of stakeholders: (1) Current participating providers of the Autism Scholarship Program; (2) Disability Advocacy Groups; (3) School District Special Education Administrators; (4) Nonpublic School Accrediting Associations of Ohio.

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

Stakeholders raised concerns that precipitated additional changes to the draft including:

- Removal of a requirement to demonstrate qualifications to do business in Ohio and inclusion of an assurance statement of compliance with all applicable laws.
- In addition to adding a cap of \$250,000 on the surety bond, additional methods of showing fiscal soundness have been included (commercial liability policy covering fraudulent acts or offsetting nonpublic school administrative cost reimbursement).
- Revocation of a provider has been amended to include notice of intent to revoke in accordance with Chapter 119 and includes department discretion to require a corrective action plan for non-compliance.

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?

No scientific data was required to develop the rule or the measurable outcomes of the rule. However, the Department of Education utilized information provided by stakeholders and discussions with the Ohio Department of Commerce, Division of Financial Institutions, to develop portions of the rule directly impacting private providers.

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?

In response to feedback from stakeholders, the Department of Education developed additional options for providers to demonstrate fiscal soundness other than a bond, including an insurance policy and the authority to offset funds otherwise owed to the provider by the Department of Education.

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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 Autism Scholarship Program is a parental choice program and not outcome based. Participating providers must show they employ or contract credentialed staff to serve the student, have adequate insurance coverage and meet health and safety requirements.

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

The Department of Education reviewed other programs established under Ohio law. Although the Autism Scholarship Program is similar to other scholarship programs available such as Cleveland Scholarship, EdChoice Scholarship and Jon Peterson Scholarship, the Autism Scholarship Program is unique in that only students with autism are eligible to participate and there are no geographic restrictions on participation.

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 application to participate in the Autism Scholarship program is electronic and each provider must submit application materials that show compliance with the requirements of the regulation. Providers who show compliance with the regulation are able to provide services to students and receive payment for those services.

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

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Businesses who choose to participate as a provider in the Autism Scholarship program and serve special needs students do incur cost. While most cost is associated with operating their business (facility, insurance, professional credential), the Autism Scholarship Program requires the business to be fiscally sound. Businesses have the following options available to fulfill this requirement:

- (1) Purchase a surety bond for one-twelfth of the previous year's scholarship revenue or ten thousand dollars, whichever is greater, but no more than two hundred and fifty thousand dollars (information provided from bonding agencies have reported no cost to authorize a bond or a minimal cost between 1% and 8% of the amount needing coverage);
- (2) Obtain a letter of credit equal to one-twelfth of the previous year's scholarship revenue or ten thousand dollars, whichever is greater, but no more than two hundred and fifty thousand dollars;
- (3) Provide a copy of a commercial liability policy, which name the Department of Education as an additional insured party or co-insured party that covers errors and omissions and/or fraudulent acts committed by the business or its employees (the policy must include coverage of at least one-twelfth of the scholarship funds received for the prior school year or ten thousand dollars, whichever is greater, but no more than two hundred and fifty thousand dollars);
- (4) Authorize the Department of Education to offset any amounts due under the Autism Scholarship Program against monies that would otherwise be distributed to the business by the Department of Education.

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

Participating providers serving scholarship students have closed abruptly with little notice to parents. Often this is a noncompliant provider needing to reimburse funds for the student to purchase services at another provider. The surety bond, letter of credit, insurance policy, or agreement supports the Department of Education's determination as to whether the provider is fiscally sound, among other things. A provider who closes abruptly prohibits a student from receipt of the full scholarship amount.

Regulatory Flexibility

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

Alternative means of compliance were provided for all private providers. In particular, the proposed regulation was amended to accommodate differently sized and situated businesses to give them a number of options for demonstrating fiscal soundness.

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?

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Not applicable. There are no fines imposed as part of this regulation.

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

The Ohio Department of Education updates and maintains a frequently asked question for providers section on the ODE website. Staff in the Office of Nonpublic Options that work with the Autism Scholarship program are available for questions and technical assistance.