

**MEMORANDUM**

**TO:** Sherry Worstell, Ohio Department Education

**FROM:** Emily Kaylor, Regulatory Policy Advocate

**DATE:** March 7, 2017

**RE:** **CSI Review – Autism Scholarship Rules (OAC 3301-103-01 through 3301-103-07)**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

This rule package consists of seven amended rules submitted by the Ohio Department Education pertaining to the autism scholarship program for their statutorily-required five-year review. The rules were originally submitted to CSI on June 6, 2016 but after multiple comments were received the Department tabled the rules to make changes. The rule package was re-submitted to the CSI Office on December 16, 2016 and the comment period closed on January 6, 2017. Nineteen comments were received during this time. The Department made further changes and provided those to CSI on February 15.

The autism scholarship program allows students to receive funding from the state to obtain special education services from a provider other than their resident school district. The rules govern the procedures to receive that funding and the process for providers of special education services to be approved. They contain definitions, application procedures for parents and providers, deadlines, school district responsibilities, and requirements for providers. The amendments rescind language that was repetitive, set deadlines for parents to apply to the Department, update the rules to reflect a shift to electronic applications, reorganize some sections

for clarity, and establish options for providers to demonstrate fiscal soundness to the Department.

Nineteen comments were submitted during this CSI public comment period. The Department provided responses and rule changes to autism stakeholders on February 13. Multiple comments came from individuals associated with public schools who stated ways in which providers should have more oversight responsibilities, mainly regarding the individualized education program (IEP) for the student, but many of their concerns relate to provisions required by ORC 3310.41. Others commented in support of the changes that the Department has made and some asked questions or expressed other concerns. The Department made rule changes where appropriate and explained when they chose not to.

The adverse impact identified in the BIA regards the documentation required to be submitted by the provider to the Department to prove fiscal soundness. In the rules, the business must purchase a surety bond, obtain a letter of credit, or establish an authorizing agreement with the Department. This is necessary as providers have closed abruptly in the past, so the Department wants to ensure that if this occurs a provider will have the ability to reimburse the student's scholarship funds. Additionally, the rules require providers to apply for registration with the Department which involves time to fulfill the application requirements, ensure they are in compliance with requirements like background checks and proper credentials for their employees, be up-to-date with all applicable health and safety codes, and regularly report to parents and the child's school district of residence.

After reviewing the proposed rules and the BIA, the CSI Office has determined that the purpose of the rule package is justified.

### **Recommendation**

For the reasons explained above, the CSI office does not have any recommendations for this rule package.

### **Conclusion**

Based on the above comments, the CSI Office concludes that the Ohio Department of Education should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.