

**MEMORANDUM**

**TO:** Diane Lease, Ohio Department Education

**FROM:** Emily Kaylor, Director of Regulatory Policy

**DATE:** October 23, 2017

**RE:** **CSI Review – Sponsor Compliance (OAC 3301-102-08)**

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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 one amended<sup>1</sup> rule submitted by the Ohio Department Education pertaining to community school sponsor compliance. This rule was originally submitted to CSI in March 2016 and re-referred by the Joint Committee on Agency Rule Review (JCARR) on August 23, 2016. The Department put the rule in "to be refiled" status with JCARR on September 7th. This rule package was submitted to the CSI Office on April 14, 2017 and the comment period closed on April 24, 2017. Four comments were received and the Department provided responses on June 27. The final version of the rule was approved by the State Board of Education on October 17.

Sponsors have previously been required to comply with applicable laws and rules, but House Bill 2 of the 131st General Assembly explicitly requires compliance with all laws and rules through better documentation and accountability. This rule establishes the new standards for measuring

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<sup>1</sup> OAC 3301-102-08 is being amended to the extent that the Legislative Service Commission requires the Department to rescind the rule and replace it with a new rule of the same number.

sponsor compliance by requiring validation of compliance items either through electronic documentation or during their onsite review. Although the list of compliance items is extremely long, the Department is complying with their new statutory requirement to partially rate sponsors on their compliance with all applicable laws and administrative rules and will provide annual guidance on the evaluation system.

There are currently 65 entities that sponsor community schools in Ohio and will be impacted by this rule, and seven of these entities are non-profit corporations that oversee approximately half of the community schools operating in Ohio. As explained in the BIA, the majority of the cost associated with this rule is employer time for compliance. The Department requested cost estimates from sponsors in January 2017. From this request, they received 14 projections which ranged from \$8,000 to \$564,100 and 200 hours for implementation to 1,657 hours. These projections vary greatly as the lower estimates came from a sponsor of one community school while the larger estimates were produced by a sponsor with 42 community schools.

In addition to the previous comment periods, for stakeholder outreach the Department posted the rule on its website, the Capacity Committee of the State Board of Education discussed the regulation at multiple public meetings, and 461 community school and sponsor contacts were directly emailed the information. Seven responses were received during this outreach and the Department made some rule changes based on feedback.

Four comments were received during the CSI comment period to which the Department responded on June 27. In response to concerns of retroactivity, the Department updated the rule so that it will not take effect until the 2018-2019 school year. Some comments were concerned that the Department was confusing sponsor and school compliance, so the Department created two lists of compliance items that distinguish between school and sponsor. The compliance lists, in accordance with House Bill 49 of the 132nd General Assembly, will be posted on the Department's website by July 15 of each year and any changes to the list cannot take effect until the following school year. Additionally, the Department will provide training for every sponsor to guide them on changes to the evaluation system. One comment was concerned about the timeline to submit compliance information by June 30 of each year, but the Department contends that this submission date is necessary in order for them to publish evaluations by the statutory deadline of October 15. Another comment was concerned about the ability for the Department to weight some compliance items greater than others. The Department argues that certain health and safety items may be weighted in the future so as to emphasize compliance items that are most important to the protection of students. At this time, the Department is not weighting any items and if they do in the future they would have to highlight those on the compliance list and notify sponsors through the annual training. In response to comments, the Department has also created a compliance list that will give sponsors a preliminary score as they fill out the document to help expedite any appeals before ratings are finalized and evaluations are published.

After reviewing the proposed rule 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.