



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: State Board of Education / Department of Education

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Operating Standards for Ohio's Schools

Rule Number(s): 3301-35-01, 3301-35-02, 3301-35-03, 3301-35-04, 3301-35-05, 3301-35-06, 3301-35-07, 3301-35-08, 3301-35-09, 3301-35-10

Date of Submission for CSI Review: 9/25/2020

Public Comment Period End Date: 10/5/2020

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? __)

Amended/ 9 rules (FYR? Y)

Rescinded/ 1 rules (FYR? Y)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☐ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☒ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

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

Rules 3301-35-01 through -10 of the Administrative Code comprise part of the Operating Standards for Ohio's schools, which include chartered and non-chartered nonpublic schools. The proposed changes to the rules were made pursuant to the requirements for a five-year review and to align rule content with current law.

Rules 3301-35-01 through 3301-35-07 set forth standards that apply generally to all school districts and chartered nonpublic schools in Ohio.

Rule 3301-35-01 contains the definitions of terms that apply throughout the chapter.

Rule 3301-35-02 requires school districts and chartered nonpublic schools to develop policies governing the district's or school's operations and educational programs.

Rule 3301-35-03 addresses blended learning, and the additional requirements for school districts and chartered nonpublic schools that operate a school or classroom as a blended learning environment to adopt policies and procedures in accordance with R.C. 3302.41.

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Rule 3301-35-04 requires schools to communicate expectations of academic performance, attendance and conduct, and to use data to communicate with stakeholders concerning student performance. The revisions to the rule would eliminate a requirement for the study of foreign language, technology, family and consumer science, and business education.

Rule 3301-35-05 requires that staff hold the appropriate credentials for their position and that schools provide and support professional development.

Rule 3301-35-06 requires that education programs be designed to meet the needs of students and that educational options meet certain criteria.

Rule 3301-35-07 requires that school districts and schools use data for the purpose of improving educational performance. The rule also sets forth the process for site evaluations of school districts and site visits of chartered nonpublic schools. The rule also provides for the granting of waivers to the rules by the Superintendent of Public Instruction.

Rule 3301-35-08 of the Administrative Code sets minimum standards for non-chartered, non-tax supported schools. According to the rule, parents must inform their school district of residence if their children attend a non-chartered, non-tax supported school. Teachers must have a four-year post-secondary degree from a recognized college or university. Schools must have courses of study in specified content areas. Schools must have a formalized grade promotion system. Schools must comply with safety and health requirements set by state and local health, fire, and safety agencies.

Rule 3301-35-09 sets minimum standards for chartered nonpublic schools. According to the rule, chartered nonpublic schools must, with certain exceptions in the rule, comply with rules 3301-35-01 through 3301-35-07. Because the rules are minimum operating standards for schools, the failure to comply with these rules can lead to revocation of the school's charter. The rule also establishes the Superintendent of Public Instruction's Nonpublic Advisory Committee.

Rule 3301-35-10 of the Administrative Code outlines procedures for beginning a new chartered nonpublic school and for changing location or ownership of a chartered nonpublic school. The proposed revisions consolidated the provisions of Rule 3301-35-10 by amending and incorporating them in Rule 3301-35-09.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

Division (D)(2) of Section 3301.07 of the Revised Code requires the State Board of Education to formulate and prescribe minimum standards to be applied to all elementary and secondary schools in this state for the purpose of providing children access to a general education of high quality according to the learning needs of each individual, including students with disabilities, economically disadvantaged students, limited English proficient

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students, and students identified as gifted. Such standards must provide adequately for: the licensing of teachers, administrators, and other professional personnel and their assignment according to training and qualifications; efficient and effective instructional materials and equipment, including library facilities; the proper organization, administration, and supervision of each school, including regulations for preparing all necessary records and reports and the preparation of a statement of policies and objectives for each school; the provision of safe buildings, grounds, health and sanitary facilities and services; admission of pupils, and such requirements for their promotion from grade to grade as will assure that they are capable and prepared for the level of study to which they are certified; requirements for graduation; and such other factors as the board finds necessary.

- 4. 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.

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

N/A

- 6. 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)?**

R.C. 3301.07(D)(2) requires the state board to formulate and prescribe minimum standards to be applied to all elementary and secondary schools in this state. These standards shall provide for the licensing of teachers and personnel; the proper organization, administration, and supervision of each school, including regulations for preparing all necessary records and reports and the preparation of a statement of policies and objectives for each school; admission of pupils; and requirements for the promotion of students, among other subjects. The purpose of Chapter 3301-35 of the Administrative Code is to meet this charge.

Rules 3301-35-08 and 3301-35-09 of the Administrative Code provide a minimum set of expectations for chartered nonpublic schools and for non-chartered, non-tax supported schools. These minimum standards help ensure that all schools provide students quality instruction and a safe, healthy learning environment.

Rule 3301-35-08 of the Administrative Code accommodates parents who choose not to send their children to public or chartered nonpublic schools because of truly held religious beliefs.

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Additionally, the provisions in Rule 3301-35-10 of the Administrative Code (which are amended and incorporated in Rule 3301-35-09), provide the process for the State Board to charter and recognize certain nonpublic schools.

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

As the rules pertain to chartered nonpublic schools, the success of this regulation will be measured by the number of chartered nonpublic schools who receive and/or maintain a charter from the State Board of Education to operate a school.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No

Development of the Regulation

9. 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.

Department staff met with the following stakeholder groups August 6-8, 2019:

Ohio Association for Supervision and Curriculum Development, Buckeye Association of School Administrators, Ohio Business Round Table, chartered nonpublic schools, Committee of Practitioners, Ohio Council of Community Schools, Ohio Department of Higher Education, Ohio Department of Public Safety, Educational Service Centers, Future Ready, High School Redesign Task Force, Infohio, Instructional Technology Services of Central Ohio, Ohio Leadership Advisory Council, Latino Education Commission, Ohio Association of Administrators of State and Federal Education Programs, Ohio Federation of Teachers, Ohio Afterschool Network, Ohio Alliance for Charter School Authorizers, Ohio alliance for Public Charter Schools, Ohio Association for Employment in Education, Ohio Association of Career and Technical Education, Ohio Association of Career Technical Superintendents, Ohio Association of County Behavioral Health Authorities, Ohio Association of Elementary School Administrators, Ohio Association of Private Colleges for Teacher Education, Ohio Association of School Business Officials, Ohio Association of School Personnel Administrators, Ohio Association of Secondary School Administrators, Ohio Blended Learning Network, Ohio Compact and Comprehensive Career Technical Schools, Ohio Council of Behavioral Health and Family Service Providers, Ohio Department of Mental Health and Addiction Services, Ohio Education Association, Ohio English Learner Advisory

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Committee, Ohio Middle Level Association, Ohio Parent Teacher Association, Ohio School Boards Association, Ohio School Counselors Association, Ohio School Psychologists Association, Ohio STEM Learning Network, Regional Data Lead Network, Community School sponsors, State University Education Deans, Superintendent's Advisory Committee for High School Graduation Requirements, Association of Christian Schools International, Catholic Conference of Ohio, Christian Home Educators of Ohio, Columbus Diocese, Directors of Curriculum, Marburn Academy, Nonchartered, nontax school leaders, Ohio Association of Public School Employees, Ohio Association of Public Service Administrators, Ohio Association of School Nurses, Ohio Center for Autism and Low Incidence, Ohio Coalition of the Education of Children with Disabilities, Ohio Council for Exceptional Children, Ohio Council of Teachers of English Language Arts, Ohio Education Library Media Association, Ohio Occupational Therapy Association, Ohio Physical Therapy Association, Ohio School Speech and Educational Audiology Coalition, Rosemont Center, St. Vincent Family Centers, and the State Advisory Panel for Exceptional Children.

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

Stakeholders provided feedback over a three-day period from August 6 through 8, 2019, in face-to-face meetings. The draft regulation was also published on the department's website from August 9, 2019 through September 9, 2019 with a request for public comment. In addition to the stakeholder engagement meetings and the public comment period, department staff met with interested stakeholders such as the Buckeye Christian Schools Organization and the Ohio Association of Independent Schools to address specific concerns.

Significant changes requested by stakeholders included the following:

- In Rule 3301-35-02(B), make the implementation of a strategic plan permissive rather than mandatory.
- In Rule 3301-35-04(B), remove references to content areas that are not listed in the Revised Code.
- For Rule 3301-35-08, make no change to the rule.

11. 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?

The department is not aware of any scientific data regarding the proposed regulations.

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12. 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?

As part of its five-year review of the rules, the State Board of Education maintained most of the provisions in the minimum standards. The Department of Education presented draft revisions to the rule to the State Board of Education. The State Board of Education adopted most of the Department's recommended revisions in the proposed rules. In consideration of the feedback from stakeholders (as mentioned in the answer to question 10 above), the rules as adopted by the State Board reflected the requests from stakeholders.

13. 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 draft regulations are performance-based, as the regulations identify the proposed outcomes for nonpublic schools and public school districts and schools, but do not prescribe the process by which the impacted entities must achieve compliance.

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

The rules were reviewed by the Department's legal counsel and program staff. Staff identified any restatements of provisions in the Revised Code. Revisions were made to remove these restatements, except where the Board believed it necessary for emphasis or to reduce confusion.

15. 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.

For chartered nonpublic schools, the Department of Education follows the rules in Chapter 3301-39 of the Ohio Administrative Code, which address the procedures for approval of a chartered nonpublic school and the monitoring and oversight of a chartered nonpublic school.

Adverse Impact to Business

16. 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; and

Chartered nonpublic schools and nonchartered nonpublic schools.

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

In response to a survey sent by the Department, chartered nonpublic schools stated the rules would create a burden in terms of supplies, resources, and personnel. Nevertheless, most of the provisions in the proposed rules are already in effect. The proposed rules also eliminate requirements.

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.

The Department invited 10 chartered nonpublic schools to provide information regarding the impact the regulations may have on operations. Three of the 10 chartered nonpublic schools responded to the Department’s request. Those respondents stated that the regulations would have an adverse financial impact. One respondent stated the financial impact at \$5,000. Another respondent stated the financial impact would be \$8,000 to \$12,000. The third respondent stating the financial impact \$150,000.

Most of the provisions in the proposed rules are already in effect. Thus, much of the financial impact is based on existing provisions.

The proposed rules also eliminate requirements. Based on the revisions made in the proposed rules, the Department does not anticipate a significant increased financial burden, if any, to the impacted entities.

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

Most of the provisions in the proposed rules are already in effect. Thus, much of the financial impact is based on existing provisions. Moreover, the State Board of Education is required by R.C. 3301.07(D)(2) to establish minimum standards for schools, and these rules are the fulfillment of that requirement.

The proposed rules also eliminate requirements. Based on the revisions made in the proposed rules, the Department does not anticipate a significant increased financial burden, if any, to the impacted entities.

Regulatory Flexibility

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

As reflection in Rule 3301-35-07, the Superintendent of Public Instruction may grant an exemption from a requirement in the minimum standards.

19. 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?

The Department does not have a waiver for fines for paperwork violations. Department staff work with chartered nonpublic schools and associations to ensure compliance with the minimum standards adopted by the State Board of Education.

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

The Department's Office of Nonpublic Educational Options offers guidance and technical assistance to chartered nonpublic schools. The Department also maintains resources on its website to assist schools. Such resources include:

- a. <http://education.ohio.gov/Topics/Operating-Standards>
- b. <http://education.ohio.gov/Topics/Ohio-Education-Options/Private-Schools/Chartered-Nonpublic-School-Information>
- c. <http://education.ohio.gov/Topics/Ohio-Education-Options/Private-Schools/Nonpublic-Schools-Forms-and-Program-Information>
- d. <http://education.ohio.gov/Topics/Finance-and-Funding/School-Payment-Reports/State-Funding-For-Schools/Non-Public-School-Funding>