



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Joseph Baker**, Director

### Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Education

Rule Contact Name and Contact Information:

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

Autism Scholarship Program; Rules describe the procedures associated with the Ohio Department of Education's administration of the Autism Scholarship Program

Rule Number(s): 3301-103-01 through 3301-103-07

Date of Submission for CSI Review: 12/19/2022

Public Comment Period End Date: 12/27/22

Rule Type/Number of Rules:

New/ 0 rules

No Change/ 1 rules (FYR? Y)

Amended/ 6 rules (FYR? X)

Rescinded/ 0 rules (FYR?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.*

OAC 3301-103-01 through 07 establish the procedures for parents to apply for the scholarship, approval of service, and the process for issuing scholarship payments. The revisions to the proposed rules are designed to better align with a similar scholarship program (Jon Peterson Scholarship), remove duplication of requirements included in Ohio Revised Code, and clarify the difference between schools providing a comprehensive educational program and associated services and service providers offering individual therapies and services.

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.

Authority: ORC 3301.07, 3310.41; Amplifies: 3310.41

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.*

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No.

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

NA

- 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)?**

Services provided to students utilizing the Autism Scholarship are based on students' unique educational and related service needs. Only students identified by their school district of residence as being on the autism spectrum who have an active individualized education program may participate in the Autism Scholarship Program. The specialized services provided to program participants are delivered by highly trained and licensed professionals. This program provides an important option for families that believe that services offered by their district of residence do not meet their children's needs.

- 7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** The agency tracks the number and processing time of program applications, program awards and time necessary to process payments.

- 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.*

The Agency used several rounds of stakeholder engagement including in-person discussions, virtual meetings and written comments. The Agency reached out by phone and email to stakeholders offering comments during the public comment period.

- The initial contact took place via telephone in December of 2021 with a selected group of stakeholders.
- First stakeholder review August 3-19, 2022 (Draft rules were discussed in person with the Nonpublic Advisory Council on 8-19-22; emails with the draft rules attached were sent to all participating nonpublic schools and service providers)

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- Revisions to draft rules August 20- September 8, 2022, based on stakeholder feedback
- Draft rules posted for public comment September 9 – October 6, 2022
- Discussion with Emerging Issues Committee including a review of stakeholder feedback during the October 2022 during the Board of Education meeting
- November 2022, emails and calls with stakeholders who submitted comments
- Discussion with Emerging Issues Committee, Committee vote took place at the November 2022 meeting of the State Board of Education
- Full board vote at December 2022 meeting

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

- Stakeholder input included several comments objecting to removal of provisions from the rule. The Agency explained that provisions of Revised Code were removed because they were duplicative.
- There were also requests to reduce the amount of detail included on invoices for services. The Agency did revise rules that apply to chartered nonpublic schools providing all services (including all education and therapy services) to reduce reporting duplication of but maintained current practice for organizations providing services on an ala carte basis. All providers must detail services and credentialed individuals providing services.
- The draft rules revised timelines to better accommodate families.

**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?**

No scientific data was utilized to develop the rule. Data regarding processing time was reviewed to determine if the rules could be made more customer friendly. As a result of the review of processing data, a decision was made to better clarify timelines.

**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?**  
*Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply*

The Agency considered further changes to the level of detail required of providers. The Autism Scholarship allows services by providers, other than the student's district of residence, to implement the student's individualized education program (IEP). IEPs can be implemented as is or modified. The Agency determined that substantially changing billing practices would not provide information necessary to monitor implementation of student IEPs.

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

The Agency confirmed that the Autism Scholarship Program does not duplicate services offered by another program.

**14. 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 Agency will implement a communication plan for families and providers, offer information sessions for families and regional and virtual training for providers, and monitors workflow related to review and approval of application and payment of invoices. The Agency monitors program productivity measures and requires annual staff training.

**Adverse Impact to Business**

**15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:**

- a. Identify the scope of the impacted business community, and**
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).**

*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.*

Scope of impacted business community includes maintaining existing levels of detail for invoicing services by providers. The rule requires that providers other than chartered nonpublic schools track and report the amount of time for each specific service, the individual providing the service and credentials of individuals providing services. This requirement does require providers to maintain a system to collect the necessary data. Cost will vary widely depending on the size of the organization and the use of automation.

There are no fees charged by the Agency to become a scholarship provider or fines levied. Providers must apply annually to be a service provider.

**16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).**  
Adding the definition of a comprehensive service provider (chartered nonpublic schools) and allowing these providers to provide a detailed description of all educational and therapy services included in the school's tuition will reduce time associated with billing for chartered nonpublic schools.

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

Implementation of statute requires the ability to track specific services provided to students and ensuring services are provided by appropriately credentialed professionals.

**Regulatory Flexibility**

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

No.

**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?**

No fines are levied.

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

The Agency provides training and technical assistance for providers. All providers are assigned a specific point of contact in the Agency to help address any issues and concerns.