

**Rule Summary and Fiscal Analysis (Part A)****Department of Education**

Agency Name

Division

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**3301-35-15**

Rule Number

**NEW**

TYPE of rule filing

Rule Title/Tag Line

**Standards for the implementation of positive behavior intervention supports and the use of restraint and seclusion.****RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **No**

2. Are you proposing this rule as a result of recent legislation? **No**

3. Statute prescribing the procedure in accordance with the agency is required to adopt the rule: **119.03**

4. Statute(s) authorizing agency to adopt the rule: **3301.07 (D)(2), (D)(3)**

5. Statute(s) the rule, as filed, amplifies or implements: **3301.07 (D)(2), (D)(3)**

6. State the reason(s) for proposing (i.e., why are you filing,) this rule:

The rule establishes standards of restraint and seclusion practices for use in public schools, pursuant to division (D)(3) of section 3301.07, of the Revised Code, which provides that the State Board of Education may formulate and prescribe additional minimum operating standards for school districts including standards for a commitment for the use of positive behavior intervention supports throughout districts to ensure a safe and secure learning environment for all students.

Background: On July 31, 2009, Arne Duncan, Secretary of Education for the United States Department of Education, issued a letter urging states to develop or review and, if appropriate, revise state policies and guidelines to ensure that every student is safe and protected from being unnecessarily or inappropriately restrained or secluded. On August 3, 2009, the Governor of the State of Ohio issued Executive Order 2009-13S establishing restraint policies and banning prone restraints, which was subsequently adopted by the State Board of Education during its October 2009 meeting. (The resolution tasked the department with reviewing current policies on restraint and seclusion and developing policy recommendations in these areas.) On May 17, 2010, pursuant to the work of an interagency task force, the State of Ohio issued a "Policy on Restraint and Seclusion Practices" that applied to fourteen state agencies, including the Ohio Department of Education, that stated that those agencies would develop their own policies, including, at a minimum, the standards set forth in the State of Ohio policy with regard to risk identification, training, and tracking and reporting. The State Board of Education received public comment in January and March 2012 from advocates and a former student concerning restraint and seclusion in Ohio schools and directed the department to present recommendations regarding that subject. The department formed an internal workgroup to address the issue, as well as an external stakeholder group to advise the department. The work of these groups resulted in the rule being proposed as well as an Ohio Department of Education policy concerning positive behavior intervention and supports, and restraint and seclusion.

7. If the rule is an AMENDMENT, then summarize the changes and the content of the proposed rule; if the rule type is RESCISSION, NEW or NO CHANGE, then summarize the content of the rule:

The rule would prohibit certain practices of restraint and seclusion, provides that restraint and seclusion are to be used only in circumstances where there is an immediate risk of physical harm, requires the tracking and reporting of incidents of restraint and seclusion, requires training and professional development, and requires school districts to develop written policies and procedures.

8. If the rule incorporates a text or other material by reference and the agency claims the incorporation by reference is exempt from compliance with sections 121.71 to 121.74 of the Revised Code because the text or other material is **generally available** to persons who reasonably can be expected to be affected by the rule, provide an explanation of how the text or other material is generally available to those persons:

The policy on positive behavior interventions and support, restraint and seclusion, as adopted by the state board of education, would not be considered to be generally available.

9. If the rule incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material electronically, provide an explanation of why filing the text or other material electronically was infeasible:

The incorporated material is subject to change beyond the purview of this rule; therefore, it would not be practical to include the material with this filing.

10. If the rule is being **rescinded** and incorporates a text or other material by reference, and it was **infeasible** for the agency to file the text or other material, provide an explanation of why filing the text or other material was infeasible:

*Not Applicable.*

11. If **revising** or **refiling** this rule, identify changes made from the previously filed version of this rule; if none, please state so. If applicable, indicate each specific paragraph of the rule that has been modified:

*Not Applicable.*

12. 119.032 Rule Review Date:

(If the rule is not exempt and you answered NO to question No. 1, provide the scheduled review date. If you answered YES to No. 1, the review date for this rule is the filing date.)

NOTE: If the rule is not exempt at the time of final filing, two dates are required: the current review date plus a date not to exceed 5 years from the effective date for Amended rules or a date not to exceed 5 years from the review date for No Change rules.

### **FISCAL ANALYSIS**

13. Estimate the total amount by which *this proposed rule* would **increase / decrease** either **revenues / expenditures** for the agency during the current biennium (in dollars): Explain the net impact of the proposed changes to the budget of your agency/department.

This will have no impact on revenues or expenditures.

\$0

This filing will not impact the agency's budget.

14. Identify the appropriation (by line item etc.) that authorizes each expenditure necessitated by the proposed rule:

NA

15. Provide a summary of the estimated cost of compliance with the rule to all directly affected persons. When appropriate, please include the source for your information/estimated costs, e.g. industry, CFR, internal/agency:

There is no cost of compliance with regard to this filing.

16. Does this rule have a fiscal effect on school districts, counties, townships, or municipal corporations? **Yes**

You must complete Part B of the Rule Summary and Fiscal Analysis in order to comply with Am. Sub. S.B. 33 of the 120th General Assembly.

17. Does this rule deal with environmental protection or contain a component dealing with environmental protection as defined in R. C. 121.39? **No**

**S.B. 2 (129th General Assembly) Questions**

18. Has this rule been filed with the Common Sense Initiative Office pursuant to R.C. 121.82? **No**

19. Specific to this rule, answer the following:

A.) Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? **No**

The rule impacts public schools.

B.) Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? **No**

C.) Does this rule require specific expenditures or the report of information as a condition of compliance? **No**

**Rule Summary and Fiscal Analysis (Part B)**

1. Does the Proposed rule have a fiscal effect on any of the following?

(a) School Districts	(b) Counties	(c) Townships	(d) Municipal Corporations
Yes	No	No	No

2. Please provide an estimate in dollars of the cost of compliance with the proposed rule for school districts, counties, townships, or municipal corporations. If you are unable to provide an estimate in dollars, please provide a written explanation of why it is not possible to provide such an estimate.

Training and professional development would be the primary source of costs to school districts, which would be required to ensure that an appropriate number of personnel in each building is trained in crisis management and de-escalation techniques and the implementation of positive behavior intervention and supports. The costs include the following categories:

1. De-escalation and crisis intervention training. The cost to train an appropriate number (10 percent) of staff per district in such techniques would vary depending on the size of the district in question and whether the district utilizes trainers from the district itself, an educational service center (ESC), or contracts with a national trainer. A large urban district, for example, may spend, on average, \$90,000.00 on training provided by its own staff or an ESC. If, however, a large urban district opted to contract with a national provider, the district's training costs could increase significantly. Based on the costs of nationally recognized programs, the cost for a large district could exceed \$2 million. For a suburban district, such costs could range from \$20,000.00 to \$400,000.00, respectively, while the costs for a smaller rural district could range from \$3,000.00 to \$23,000.00, respectively. (Please note that many ESC's in Ohio provide national model training for little to no cost to districts and that roughly a third of districts currently engage in de-escalation and crisis intervention training.)

2. Implementation of positive behavior intervention and supports (PBIS). The cost to implement PBIS district-wide includes the training and utilization of staff tasked to work with teams in the schools. For the first year, the cost per building would be roughly \$10,000.00, which would decrease during the second year to roughly \$3,000. The costs would continue to decrease based on the degree to which a district implements PBIS. One cost that would remain constant, however, would be the annual cost of operating a "district data management system," which the department estimates would be roughly \$400.00 per building, if the district does not currently have an established system.

3. Substitute teachers. The cost of hiring substitutes in order to allow staff to participate in required training or team meetings concerning PBIS without altering the length of the school year would vary on the number of substitutes needed and the frequency they are used. The cost of a substitute for a day ranges from approximately \$75.00 to \$150.00. The actual cost that a district could incur would depend on the extent to which training can be accommodated within existing days in the school calendar for professional development, and the extent to which a district has already implemented PBIS. In addition, the department is permitting districts to implement the program of the course of multiple years.

3. If the proposed rule is the result of a federal requirement, does the proposed rule exceed the scope and intent of the federal requirement? **No**
4. If the proposed rule exceeds the minimum necessary federal requirement, please provide an estimate of, and justification for, the excess costs that exceed the cost of the federal requirement. In particular, please provide an estimate of the excess costs that exceed the cost of the federal requirement for (a) school districts, (b) counties, (c) townships, and (d) municipal corporations.

*Not Applicable.*

5. Please provide a comprehensive cost estimate for the proposed rule that includes the procedure and method used for calculating the cost of compliance. This comprehensive cost estimate should identify all of the major cost categories including, but not limited to, (a) personnel costs, (b) new equipment or other capital costs, (c) operating costs, and (d) any indirect central service costs.

As indicated in our response to question two, the overall cost to a district would depend greatly on the size of the district, the type of training the district decides to provide to its staff, and the degree to which the district implements PBIS. If a district, regardless of its size, decides to contract with a national provider, the cost of implementing the requirements of the rule would be significantly greater than if the district elects to use existing staff or an ESC.

#### (a) Personnel Costs

School districts are not required to hire additional personnel to implement the requirements established by the rule and the department does not anticipate that a district would necessarily need to hire additional staff to implement those requirements; however, it is conceivable that a district may contract with an individual to provide training on a limited or as-needed basis, which

would depend, again, on the type of training a district decides to provide to its staff.

(b) New Equipment or Other Capital Costs

NA

(c) Operating Costs

The costs described in our response to question two would be operational in nature and would vary depending on the exact size of the district (i.e. the number of buildings the district operates) the type of training the district elects to provide, and the degree to which a district implements PBIS.

(d) Any Indirect Central Service Costs

NA

(e) Other Costs

NA

6. Please provide a written explanation of the agency's and the local government's ability to pay for the new requirements imposed by the proposed rule.

Specific funds for districts have not been created to implement the requirements of the rule.

7. Please provide a statement on the proposed rule's impact on economic development.

NA