

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

Agency Name

Division

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3301-51-11

Rule Number

AMENDMENT

TYPE of rule filing

Rule Title/Tag Line

Preschool special education requirements.**RULE SUMMARY**

1. Is the rule being filed consistent with the requirements of the RC 119.032 review? **Yes**

2. Are you proposing this rule as a result of recent legislation? **Yes**

Bill Number: **HB59**General Assembly: **130**Sponsor: **Amstutz**

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 , 3301.07(J) , 3323.02 , 3323.07 , 3323.08**

5. Statute(s) the rule, as filed, amplifies or implements: **3301.07(J) , 3323.01 , 3323.02 , 3323.07 , 3323.08 , 3327.01 , 3327.02**

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

The rule is being amended pursuant to the requirements of five-year rule review; to implement the special education provisions of Chapter 3323. of the Revised Code as amended effective September 29, 2007; and to implement the requirement of the

Individuals with Disabilities Education Improvement Act of 2004 (IDEA) effective July 1, 2005 and the federal regulations implementing IDEA effective October 13, 2006 (December 31, 2008).

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 establishes that preschool special education programs and related services operated by school districts, county boards of developmental disabilities, and other education agencies shall be provided in accordance with this chapter of the Administrative Code and that each school district shall develop and annually review interagency agreements with all partners to ensure a free appropriate public education (FAPE) is provided to all preschool children with disabilities between the ages of three through five residing in the school district. Proposed changes to the rule include the following: All references to the phrase "preschool child(ren) with a disability" have been replaced with "preschool child(ren) who is eligible for special education services." Language was added to clarify that no single source of information, such as a single measure or score, can be used to determine whether a preschool child is or is not eligible for special education. Language has been added to indicate that there is no requirement that a child must have previous school experience to receive extended school year services. References to state unit funding have been removed. Language was added regarding the requirement that transportation must be listed as a related service on the child's IEP if transportation is required for the child to access and benefit from special education. Several minor changes were made to reflect recent changes in terminology, such as the removal of the term "mental retardation" or "MR."

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 rule incorporates a federal act that would 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 material incorporated into the rule is voluminous and subject to change beyond the purview of the rule; therefore, it would not be feasible 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: **3/13/2014**

(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

Negligible impact.

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

200-680 Ind. w/Disabilities Education Act, and 200-550 Foundation Funding

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 impact on directly affected persons or groups.

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**

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.

It is not possible to determine an exact dollar amount given the fact that the special education and related service will vary greatly, district to district and child to child depending on the child's Individualized Education Program (IEP); the number of facilities within the district's jurisdiction and the number of children requiring transportation as part of their IEP.

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? **Yes**

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.

The rule exceeds the Individuals with Disabilities Education Act in several areas, which are as follows. This rule requires school districts to develop and annually review interagency agreements with all partners to ensure a free appropriate public education (FAPE) is provided to all preschool children who are eligible for special education services. This rule specifies preschool special education requirements regarding the eligibility of preschool children three through five years of age, measuring a child's progress, center-based and itinerant teacher services, preschool services, and preschool service provider ratios beyond what is required by the federal regulations. This rule includes a definition of the term "developmental delay" that has been adopted by the Ohio Department of Education, which is a decision left to the discretion of each individual state under the IDEA. The IDEA requires a child's individualized education program (IEP) team to determine if transportation is required to assist a child with a disability to benefit from special

education and related services. This rule further requires that for a preschool child, the IEP team must determine if transportation is required for the child to access and benefit from special education. The excess costs, if any, would apply to school districts and the requirement under this rule (as well as Revised Code) to develop and annually review the interagency agreement with partners to ensure that a free and appropriate public education (FAPE) is provided to all preschool children who are eligible for special education services. This cost is minimal and would encompass potential staff time in the development and review of these agreements. Service provider ratios could potentially create excess cost for a school district as this rule imposes limits on the number of preschool students with disabilities providers can serve. There are many variables to consider in determining an estimate of the excess cost, including the number of students with disabilities and individual service needs of each student. Costs could involve the hiring of additional staff. The average cost of a starting teacher in the State is approximately \$36,096, according to the National Educational Association (NEA) 2012-2013 cost study. The required preschool service provider ratios serve to help ensure that students with disabilities in Ohio are provided a free and appropriate public education pursuant to the requirements of IDEA and its implementing regulations. Regarding the use of the term "developmental delay," there is not likely to be an excess cost, as school districts are still required to serve children ages three to five regardless of whether or not the school district adopts and uses the term "developmental delay."

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.

It is not possible to determine an exact dollar amount given the fact that the special education and related service will vary greatly, district to district and child to child depending on the child's Individualized Education Program (IEP); the number of facilities within the district's jurisdiction and the number of children requiring transportation as part of their IEP.

(a) Personnel Costs

Should the school district be required to hire any additional staff, the average cost of a starting teacher in the State is approximately, \$36,096 according to the National Educational Association (NEA) 2012-2013 cost study.

(b) New Equipment or Other Capital Costs

No associated costs.

(c) Operating Costs

Not able to determine.

(d) Any Indirect Central Service Costs

Not able to determine.

(e) Other Costs

No associated costs.

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.

Districts who serve children with disabilities receive IDEA Part-B (federal) flow-through funds, state-weighted special education funds (GRF), and local funds (locally generated).

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

None anticipated.