

Rule Summary and Fiscal Analysis

Part A - General Questions

Rule Number: 3301-51-11

Rule Type: New

Rule Title/Tagline: Preschool children eligible for special education.

Agency Name: Department of Education

Division:

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I. Rule Summary

1. Is this a five year rule review? No
 - A. What is the rule's five year review date?
2. Is this rule the result of recent legislation? No
3. What statute is this rule being promulgated under? 119.03
4. What statute(s) grant rule writing authority? 3301.07, 3301.07(J), 3323.02, 3323.07, 3323.08
5. What statute(s) does the rule implement or amplify? 3301.07(J), 3323.01, 3323.02, 3323.07, 3323.08, 3327.01, 3327.02
6. What are the reasons for proposing the rule?

Five year rule review. Greater than 50% of the current rule is being amended so a new one is being proposed. The proposed rule provides for the requirements for local educational agencies, educational service centers, and county boards of developmental disabilities in identifying and serving preschool children with disabilities.

7. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

The key amendments to this revision include clarifying definitions, updating the rule to align with preschool special education ratio as required by ORC 3323.022 (changed from 1 teacher for every 6 students to 1 teacher for every 8 students), and complying with other applicable law and rules. The proposed revisions also remove duplicative language in the Individuals with Disabilities Education Act (IDEA, Title 34, Part 300 of the Code of Federal Regulations), Ohio Revised Code Chapter 3323 and Ohio Administrative Code Chapters 3301-51 and 3301-37. Finally, the proposed revisions clarify the federal requirement to provide a continuum of placement options from least restrictive to most restrictive environments.

- 8. Does the rule incorporate material by reference? Yes**
- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

The rule references provisions of the Ohio Revised Code, the Ohio Administrative Code, and the federal Individuals with Disabilities in Education Act.

- 10. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

- 11. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

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Not applicable

- 12. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

The costs of compliance are covered in the school funding provided for each pupil. Each preschool child is funded at \$4,000 base, plus a rate based on eligible disability category. The rates are available in ORC 3317.0213.

13. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No
14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No
15. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.

Not applicable

III. Common Sense Initiative (CSI) Questions

16. Was this rule filed with the Common Sense Initiative Office? Yes
17. Does this rule have an adverse impact on business? Yes

- A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes

All Preschool classrooms must be licensed by the Ohio Department of Education, as set forth in ORC 3301.58.

- 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? Yes

Failure to comply with this rule may result in the loss of preschool licensure needed to operate (ORC 3301.58).

- C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

This rule requires reporting of data into the Education Management Information System (defined in ORC 3301.0730), as set forth in rule paragraph (B), which requires following OAC 3301-37.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes

A. How many new regulatory restrictions do you propose adding? 45

(A)(1)(a)(iv): The class must have more children without disabilities enrolled than children with disabilities

(A)(1)(a)(v): The co-taught class shall be considered a general education class for program licensing purposes

(A)(1)(g): All references to the term "regular education" used in the federal regulations at 34 C.F.R. Part 300 shall have the same meaning as this definition.

(A)(1)(g), "Public school preschool general education class" - iv.: The lead teacher of a public school preschool general education class shall not serve as the intervention specialist of record or IEP case manager for any children with disabilities (i.e., children with IEPs), even if the individual holds appropriate licensure for those roles;

(A)(1)(g), "Public school preschool general education class" - v.: the class must have more children without disabilities enrolled than children with disabilities; the department may grant a waiver (on a case-by-case basis) for additional children with disabilities to be enrolled...

(A)(1)(g), "Public school preschool general education class" - vi.: the class must have more children without disabilities enrolled than children with disabilities; the department may grant a waiver (on a case-by-case basis) for additional children with disabilities to be enrolled.

(A)(1)(g), "Non-public school preschool program" – ii.: The ratings of each program shall be determined in accordance with O.A.C. 5101:2-17-01.

(C): A school district who provides preschool special education shall comply with rule 3301-51-02 of the Administrative Code.

(D): A school district who provides preschool special education shall comply with rule 3301-51-03 of the Administrative Code.

(D)(2)(c): The agreement must include, but is not limited to, the following requirements:

D)(3)(a)(i): The school district shall not delay or refuse participation in the transition conference because of residency disputes or the absence of a birth certificate

(D)(3)(b): The date of referral to the school district shall be the earliest of the following:

(D)(3)(d): If the child's third birthday occurs during the regular school year, services must begin by the child's third birthday.

(D)(3)(e): A school district shall not require any child to have previous school experience to receive extended school year services.

(E): A school district who provides preschool special education shall comply with rule 3301-51-04 of the Administrative Code.

(F): A school district who provides preschool special education shall comply with rule 3301-51-05 of the Administrative Code.

(G): A school district who provides preschool special education shall comply with rule 3301-51-06 of the Administrative Code.

G)(1)(b): Observations in more than one setting and in multiple activities shall be conducted after obtaining parental consent for such observations;

(G)(2)(a): At a minimum, the group of qualified professionals must include two or more representatives of the school district who collectively meet the following requirements:

(G)(4)(a): ... beginning the first day of the school year, unless an alternative start date is determined by the IEP team, which must include the child's parent.

(G)(4)(b)(ii): A child who is eligible for preschool special education under the category of developmental delay and turns six during the school year must have a preschool reevaluation prior to age six to determine eligibility under one of the other eligibility categories.

(H): A school district who provides preschool special education shall comply with rule 3301-51-07 of the Administrative Code.

(I): A school district who provides preschool special education shall comply with rule 3301-51-08 of the Administrative Code.

(J): A school district who provides preschool special education shall comply with 34 C.F.R. 300.114 through 300.118 and rule 3301-51-09 of the Administrative Code

(J)(1): In ensuring that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services, a school district shall annually prepare, post publicly, and make available to parents during the evaluation process; a list of the available preschool education service options in the community.

(J)(1): This list shall not be limited to service providers within the geographic boundaries of the district but

(J)(1): shall include providers outside the limits of the school district boundaries that may be more easily accessible to children with disabilities living within the boundaries of the school district.

(J)(1): This list shall inform the discussions and decision on the appropriate placement of each child with a disability.

(J)(2): In considering appropriate placement options consistent with the requirement to service students in the least restrictive environment, the IEP teams shall consider available options:

(J)(3): The placement decision made annually by the IEP team, which includes the parents, shall include consideration of the child being educated in the school that he or she would have attended if nondisabled.

(J)(4): A child who already participates in a regular early childhood setting when identified as a child with a disability shall remain in the program in which the child is enrolled unless the IEP team determines that it is unable to serve the child consistent with the provisions in (3) above.

(J)(4): A child with a disability shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(J)(5)(a): When determining services, the school district shall consider the requirements in 3301-51-09 and the following factors:

(J)(5)(b): Unless otherwise specified by the IEP team, services shall be provided for all preschool children eligible for special education services in accordance with the following:

(J)(5)(b)(i): A child served in the home or service provider location must be provided a minimum of one hour of instruction per week in the general education curriculum that includes specially designed instruction;

(J)(5)(b)(ii): From the effective date of this rule children served in any setting other than home or service provider location must be provided a minimum of 360 hours of programming per year,

(J)(5)(b)(ii): which must include instruction in the general education curriculum, and a minimum of one hour of specially designed instruction or related services per week.

(J)(5)(b)(iii): For all preschool children receiving special education services "support for school personnel services" must be considered during each IEP meeting.

(J)(5)(c): A child with a visual and/or hearing impairment who receives services in a non-categorical classroom shall have a minimum of support for school personnel services provided by an intervention specialist licensed in the area for the child's sensory impairment(s) (e.g, PK-12 Intervention Specialist for Hearing Impaired).

(J)(8): Each school district shall designate a qualified individual to ensure preschool special education services are provided in accordance with all applicable rules, regulations, and laws.

(J)(8): The designated individual shall be responsible for the following:

(J)(9): In addition to caseload requirements, school districts must consider the overall workload of each staff member in accordance with OAC 3301-51-09 and the licensing ratio requirements for preschool programs defined in OAC 3301-37-04.

(J)(9)(a): A full-time early childhood intervention specialist shall be provided when there are eight full-day or sixteen half-day children served on IEPs enrolled in a public school preschool special education class.

(J)(9)(b): An intervention specialist classroom teacher responsible for eight or more half-day class sessions (e.g., four morning and four afternoon sessions per week), or four full-day class sessions shall not carry an additional itinerant caseload;

(J)(9)(e): An itinerant intervention specialist at one FTE shall serve no more than twenty eligible preschool children;

B. How many existing regulatory restrictions do you propose removing? 40

A): Preschool special education programs and related services operated by school districts, county boards of developmental disabilities (county boards of DD), and other education agencies shall be provided in accordance with this chapter of the Administrative Code.

Former (D)(3): The dates for the initiation and duration of services shall be determined by the evaluation team or the IEP team and other qualified professionals.

Former (C): Each school district of residence must conduct a full and individual evaluation in accordance with rule 3301-51-06 of the Administrative Code before the initial provision of special education and related services to a preschool child eligible for special education services residing in the district.

Former (C)(1): No single source of information, such as a single measure or score, shall be used to determine if a preschool child is eligible or not eligible for special education and related services. Eligibility for special education and related services as a preschool child shall be determined on the basis of multiple sources of information, including, but not limited to:

Former (C)(3): The following developmental areas must be assessed with at least one source of information listed in paragraphs (C)(1)(a) to (C)(1)(d) of this rule:

Former (F): A continuum of service delivery options that includes the options of center-based or itinerant teacher services shall be considered when determining the least restrictive environment.

Former (F)(1): Adapted physical education (APE) or related services, as appropriate, shall be considered in conjunction with center-based or itinerant teacher services

Former (F)(1): When determining services, the school district shall consider the following factors:

Former (F)(4): Center-based options must include opportunities for services in settings that are considered to be early childhood settings as the term is used by the United States department of education.

Former (F)(6): Center-based environments meeting the federal definition of an early childhood setting shall be considered during the IEP meeting.

Former (F)(7): In such cases, no more than sixteen children shall be present at any one time.

Former (F)(7): The maximum number of children enrolled in any class shall be appropriate for the severity of disabilities and needs of the children enrolled.

Former (G): Special education and related services shall be provided in accordance with the following:

Former (G)(2): Unless otherwise specified in the IEP, a minimum of four hours of services per month shall be provided for each child by an itinerant teacher

Former (G)(2): and a minimum of ten hours of services per week shall be provided for each child served by a center-based teacher:

Former (G)(4): All staff involved in service delivery shall contribute to planning instruction and monitoring progress;

Former (G)(6): A school year consistent with section 3313.48 of the Revised Code shall be provided to preschool children who are eligible for special education.

Former (H)(1): Center-based preschool special education classrooms shall serve no more than eight preschool children with disabilities in any one class session.

Former (H)(1): If a teacher is responsible for two half-day class sessions, no more than sixteen children shall be served per teacher;

Former (H)(2): A full-time staff member shall be provided when there are six full-day or twelve half-day preschool children eligible for special education enrolled in a center-based program;

Former (H)(3): A teacher providing both center-based and itinerant services shall serve no more than twenty children, and each child will be considered .50 FTE;

Former (H)(4): An itinerant teacher shall serve no more than twenty children, and each child will be considered .50 FTE;

Former (H)(5): Staff ratios of one teacher for six children shall be maintained at all times for a center-based teacher,

Former (H)(5): and a second adult shall be present when there are seven or more children, including nondisabled peers, enrolled in a class session

Former (H)(6): Sufficient staff shall be available at all times when preschool children eligible for special education are enrolled so that in emergency situations when help must be summoned,

Former (H)(6): ratios shall be maintained,

Former (H)(6): and children shall be sufficiently supervised during all activities;

Former (H)(7): APE and related services shall be counted as one FTE based upon the following number of eligible preschool children served

Former (H)(7)(a): An APE staff member at one FTE shall have a caseload of no more than one hundred eligible preschool children;

Former (H)(7)(c): An audiologist at one FTE shall have a caseload of no more than seventy-five eligible preschool children with hearing impairments;

Former (H)(7)(d): An occupational therapist at one FTE shall have a caseload of no more than forty eligible preschool children;

Former (H)(7)(e): An orientation and mobility specialist at one FTE shall have a caseload of no more than forty eligible preschool children with visual impairments;

Former (H)(7)(f): A physical therapist at one FTE shall have a caseload of no more than forty eligible preschool children;

Former (H)(7)(g): A school psychologist at one FTE shall have a caseload of no more than seventy-five eligible preschool children or on the basis of one thousand children, ages three through five, an average daily membership as authorized by section 3317.15 of the Revised Code;

Former (H)(7)(h): A speech and language pathologist at one FTE shall have a caseload of no more than fifty eligible preschool children.

Former (H)(9): The number of hours for FTE shall not exceed the total number of days per year that the preschool special education program is legally in session.

Former (I)(1): Personnel providing preschool services shall hold one of the following licenses in accordance with Chapter 3301-24 of the Administrative Code:

Former (I)(3): Preschool special education teachers whose caseloads include children with visual and/or hearing impairments shall be provided assistance from a teacher or other specialist licensed in the area for that sensory impairment.

Former (J)(1): A preschool special education supervisor's services shall include but are not limited to

Former (J)(2): The early childhood supervisor shall meet the following minimum qualifications:

PLEASE NOTE: To comply with the 2:1 regulatory restriction directive, additional restrictions were removed from other rules as noted below to balance it out.

This package, this rule (40 removed)

Package #190005, Rule 3301-35-15 (3 removed)

Package #190017 Rule 3301-32-02 (15 removed)

Package #190018 Rule 3301-37-04 (24 removed); Rule 3301-37-07 (2 removed); Rule #3301-37-09 (6 removed) to total 90 removed.