

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

Agency Name

Division

Matt DeTemple

Contact

25 South Front St. Columbus OH 43215-4183

Agency Mailing Address (Plus Zip)

614-466-4705

Phone

Fax

3301-51-11

Rule Number

NEW

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? **No**

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

Bill Number: **HB119**General Assembly: **127**Sponsor: **Dolan**

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 filed pursuant to the requirements of five-year review; implements the special education provisions of Chapter 3323. of the Revised Code as ammended by HB 119 of the 127th General Assembly; implements the requirements of the Individuals with Disabilities Improvement Act of 2004, effective July 2005, and the federal regulations implementing IDEA effective October 2006. It is being filed as 'Rescind and New' due to the amount of proposed

changes.

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 proposed rule establishes the requirements for preschool special education in the following areas: interagency agreements; eligibility; transition from Part C early intervention; measuring child progress; center-based and itinerant teacher services; preschool services; preschool service provider ratios; preschool personnel qualifications; preschool supervisory services; and preschool transportation.

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 proposed new rules incorporate by reference materials that are generally available, including a variety of federal acts; various federal regulations; other rules of the Administrative Code; and Chapter 3323. of the Revised Code along with other sections of the Revised Code.

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 text of federal Acts, federal regulations, state law, and other state rules are not typically included in rules; due to the sheer volume of the text in question, to do so would not be practical.

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:

The rule is being refiled to improve the internal consistency of language located within paragraph (C) of the rule regarding eligibility for special education and related services. The paragraph has been restructured and language has been included to enhance the consistency between the use of diagnostic instruments and procedures and other factors used to determine eligibility.

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.

negligible

The proposed rule would neither increase or decrease revenues as department procedures would not vary. Technical assistance systems are in place and the content of the information provided would change as it does each year.

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

GRF 200-540 and Title VI-B IDEA (federal 200-680)

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**

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.

The operating standards for special education (as codified in Chapter 3301-51 of the Administrative Code) establish the framework for services to be provided by school districts to children with disabilities. The fiscal impact on districts, therefore, of the changes proposed to each rule within this chapter, will vary greatly depending on the facilities within a district, and both the number and range of disabilities of students served.

The proposed rule clarifies current requirements in IDEA, state statute, and federal reporting requirements such as the Annual Performance Report. The rule as proposed provides latitude in service provision. Any actual increase or decrease in costs would be based upon implementation of the district's continuous improvement plan. The following scenarios indicate how a district cost may decrease: (1) Currently, rules provide for 6 preschool children with disabilities to be enrolled in a class with up to 6 nondisabled peers. As our current federal reporting classifies this setting as an early childhood setting and not a preschool special education setting, district reporting of the least restrictive environment can appear to be less restrictive. In this model however, up to 8 children with disabilities can be enrolled; most districts engage in this practice to maximize resources. As a result, the class is no longer an ECE setting and the district appears to have more restrictive settings. The proposed rule permits 8 children with disabilities and up to 8 nondisabled peers that can be enrolled in a classroom, thus maintaining the ECE setting; (2) Current rules limit the caseload for a teacher who provides both center-based and itinerant services to the maximum number allowable for center-based services. The proposed rule increased this ceiling from 16 to 20 to permit a wider range of options in serving children; (3) Current rules require 4 methods to be used to determine eligibility and that all must agree the child has a documented developmental deficit, but the evaluation team makes the eligibility determination based upon the data available. For those districts that assessed until an eligibility 'score' is determined, this practice is eliminated; (4) Eligibility for preschool mirrors school-age requirements with the addition of the category developmental delay. There should

be less re-evaluation to determine eligibility when a child transitions to school-age as the categories are the same. Federal and state compliance with the IDEA requirements for a child transitioning from birth through 2 programs (Help Me Grow, Part C, and early intervention) are emphasized in this rule. For those districts that have not implemented strategies for this process, additional costs may be incurred. These should not be seen as an increase as districts have been required to implement these procedures consistent with the requirements of the current rules.

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 state changes are as follows: (1) Change the maximum number of children who may be enrolled in different settings and changes the maximum caseloads. (2) Adds that a preschool child who meets one of the federal disability categories, and by reason of the disability needs special education and related services, qualifies as a child with a disability. (3) Adds a new definition of developmental delay which is essentially the same as the current definition of documented deficit. A preschool child with a developmental delay, who by reason thereof needs special education and related services, may, at the option of the school district, qualify as a child with a disability. A school district has the option of qualifying a child who meets this definition in lieu of requiring that the child meet one of the federal disability categories. In either situation the child must need special education and related services by reason of the disability or developmental delay. Possible cost savings: The state change related to maximum enrollment numbers and maximum caseloads involves a possible cost savings. There is no cost associated with requiring that the child must meet one of the disability categories, instead of meeting the definition of developmental delay. The new definition of developmental delay is essentially the same as the current definition of documented deficit.

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.

(a) Personnel Costs

Proposed changes unlikely to impact staffing.

(b) New Equipment or Other Capital Costs

No anticipated costs.

(c) Operating Costs

Districts could incur a cost savings due to increased flexibility.

(d) Any Indirect Central Service Costs

No anticipated costs.

(e) Other Costs

No anticipated 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.

Any additional costs for implementing preschool special education as required by federal and state statute would depend upon the local education agency's continuous improvement planning process and collaboration with other community preschool programs. This should be viewed in conjunction with the districts overall processes as required under Chapter 3301-35, Operating Standards for Ohio Schools and budget for the Comprehensive Continuous Implement Plan required by ODE for federal funding..

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

None anticipated.