

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Education

Regulation/Package Title: Chapter 3301-37 of the Administrative Code regarding child day-care programs

Rule Number(s): 3301-37-01 Definitions ; 3301-37-02 Compliance and Investigation ; 3301-37-03 Program; 3301-37-04 Staff; 3301-37-05 Facility; 3301-37-06 Equipment and Supplies ; 3301-37-07 Policies and Procedures ; 3301-37-08 Child Information; 3301-37-09 School food services; 3301-37-10 Behavior management /discipline 3301-37-11 Management of communicable disease; 3301-37-12 Diapering

Date: _____

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

Ohio law requires the state board of education to formulate and prescribe by rule minimum health and safety standards to be applied to preschool programs operated by local school district boards of education, county boards of developmental disabilities, educational service centers, joint vocational schools, and eligible chartered nonpublic schools. The rules regulate staff roles and responsibilities, indoor and outdoor facility dimensions and qualities, disease prevention and management, discipline policies and child safety requirements, among others.

Proposed amendments to the rules provide clarification of the intent of the rule or law, and correct typographic errors. In some cases, amendments are related to changes in state law or federal regulations, language or intent. For example, rule 3301-37-06 addresses the need for cribs to meet new federal standards (Federal Standards: 16 CFR parts 1219, 1220, and 1500).

The Common Sense Initiative (CSI) applies to the rules under review that regulate programs operated by businesses. While most entities the department licenses are not in this category, eligible chartered nonpublic schools would. Eligible nonpublic schools are private schools that hold valid charters issued by the Ohio's State Board of Education and maintain compliance with the *Operating Standards for Ohio's Schools* (Chapter 3301-35 of the Administrative Code). These schools are not supported by local or state tax dollars and require families to pay tuition. As such, the following business impact analysis applies only to eligible chartered nonpublic schools.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Section 3301.53 of the Revised Code specifically authorizes the State Board of Education to formulate minimum standards to be applied to preschool programs, including those operated by eligible nonpublic schools.

3. Does the regulation implement a federal requirement?

Code of Federal Regulations 45, parts 98 and 99, declare that each state is allowed maximum flexibility in developing child care programs and policies that best suit the needs of the children and parents within the state.

4. 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?

Yes; however, the only proposed amendment to the rules that relates to the enforcement of federal law would be the requirement that cribs used in childcare programs must meet federal requirements (Federal Standards: 16 CFR parts 1219, 1220, and 1500).

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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

The rules that set out who must obtain a license, what training personnel need to have, how many children can be cared for, and what kind of environment must be provided, are established by each state pursuant to its law and, therefore, differ among states.

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)?

The rules protect the health and safety of children served in care and education settings. Young children look to their parents, teachers, and care givers to meet their needs for safe environments in which to grow, develop, and thrive. Current brain research confirms the life-long impact the first five years has on a child's future education, relationships and earning power. Basic health and safety requirements provide the foundation for quality programs that in turn support the children they serve.

7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Annual on-site monitoring visits, on-going technical assistance and participation in continuous improvement efforts, including the creation, review and approval of corrective action plans provides benchmarks and measures related to the success of rules.

An annual report provided to the Governor and General Assembly by the Office of Early Learning and School Readiness outlines important outcomes of licensing performance, including the number of programs receiving compliance visits. Violations occurring most frequently are summarized in the report to ensure they are addressed through guidance and technical assistance. The report is posted on the department's website each year for the public to review.

Development of the Regulation

8. 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.

December 3, 2013

Each of the five hundred and forty-eight entities with sites that are currently licensed by the Ohio Department of Education, including one hundred and fifty-one eligible chartered nonpublic schools, was sent an electronic invitation to review and comment on the draft rules. The e-mail included a link to the rules and provided a form on which to comment. Participants were requested to note fiscal implications, in addition to any concerns or desired changes for each rule. The comment form and draft rules were also posted on the

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

department's program licensing web page with a request for comment from all interested parties.

December 10, 2013

A face-to-face meeting with stakeholders was held on December 10, 2013. The stakeholders were representatives selected by superintendents or governing body administrators of programs currently licensed by the department. The superintendents were randomly selected, contacted by phone and requested to attend or send a designee to the meeting in Columbus to participate in a review of the rules. The group included participants from local school districts, educational service centers, county boards of developmental disabilities, joint vocational schools, and eligible nonpublic schools. Six eligible chartered nonpublic schools were among the twenty-four entities invited to attend.

Chartered Nonpublic Schools

Gloria Dei Montessori	Montgomery County
Montessori Mahoning Valley	Mahoning County
Columbus Academy *	Franklin County
Hathaway Brown	Cuyahoga County
Northside Christian Academy	Medina County
Troy Christian *	Miami County

* indicates a representative attended the face to face meeting

Public Districts and Entities

Brecksville-Broadview Heights City Schools	Cuyahoga County
Colonel Crawford Local SD	Crawford County
Fairlawn Local SD	Shelby County
Hudson City SD	Summit County
Lynchburg-Clay Local SD	Highland County
Mount Vernon City SD	Knox County
Norwood City Schools City SD	Hamilton County
River View Local SD *	Coshocton County
Teays Valley Local SD	Pickaway County
Western Reserve Local SD *	Huron County
Penta Joint Vocational SD *	Wood County
Warren County JVSD	Warren County

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Geauga Educational Service Center *	Geauga County
MCESC Educational Service Center	Mahoning County
Putnam Educational Service Center	Putnam County
Harrison County Board of DD	Harrison County
Pike County Board of DD	Pike County
Wyandot Co Board of DD	Wyandot County

In addition, a representative from each type of program licensed by the department, three staff members from the licensing office of the Ohio Department of Job and Family Services participated in the rule review. (The Ohio Department of Job and Family Services is responsible for licensing community child care programs in the private sector.) The department and ODJFS are working closely on increasing the alignment between and within their licensing rules. Rules were reviewed in small groups and then discussed by all in attendance.

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

Among comments provided, none related to any potential adverse impact on business. All written comments from the electronic postings and face-to-face meeting were considered and subsequently incorporated into the draft regulation, as applicable. Relatively few revisions were suggested and the majority of comments related mostly to the need for further clarification of the rules.

Some of examples of comments that are now found in the proposed rules include:

- Use of the word “positive reinforcement” instead of “praise”;
- Use of “container that can be sanitized” in place of “plastic container” for soiled diapers;
- More specific guidance on the receipt, labeling and storage of baby formula and breast milk;
- The use of powdered milk as an ingredient only and not as a beverage.

10. What scientific data was used to develop the rule or the measurable outcomes of the rule?

The American Public Health Association (APHA) and the American Academy of Pediatrics (AAP) jointly published *Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Out-of-Home Child Care Programs*. The publication was the product of a five year national project funded by the U.S. Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Bureau (MCHB). The comprehensive set of health and safety standards contained within the report was a response to a multi-year effort by advocates to increase the quality child care. In the years that followed, experts in the field have repeatedly reaffirmed the need for these

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

standards. A second and third edition of *Caring for Our Children* have been published that address new knowledge generated by increasing research into health and safety in early care and education programs. The increased use of the standards both in practical onsite applications and in research documents the value of the standards and validates the importance of keeping the standards current. *Caring for Our Children* has served as yardstick for measuring progress in the field, charts the future of care in education settings, and provides for a technical manual on best-practices.

11. How does this data support the regulation being proposed?

The proposed regulation incorporates the ten basic health and safety standards highlighted in the aforementioned *Caring for Our Children* report including compliance and investigation, program, staff, facilities, equipment and supplies, policies and procedures, child information, school food services and management of behavior/discipline and communicable diseases.

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?

Alternatives were not considered as the rules are required by section 3301.53 of the Revised Code.

13. Did the Agency specifically consider a performance-based regulation? Please explain.

No. Performance-based regulations define the required outcome, but do not dictate the process the affected community must follow to achieve compliance. The regulations were developed to implement specific state mandates intended to increase the health, safety and general well-being of children in care and education settings.

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

Besides chartered nonpublic schools, the department licenses childcare programs that are operated by public educational entities; therefore, the department reviewed Ohio's *Operating Standards for Ohio School Districts and Schools* (Chapter 3301.35 of the Administrative Code) to ensure that the child-day care rules did not duplicate anything contained within those rules. Additionally, ODJFS regulates privately-operated child care programs and staff from the agency participated in the review of the rules in order to eliminate duplication and promote proper alignment.

15. 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.

Technical assistance is available to programs through electronic webinars and training that covers the following topics: preparation of an on-site visit checklist; completing forms related to staff and child requirements; helpful curriculum and standards resources; and health and safety issues and professional development training information. The department

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

plans to provide assistance to the field on proposed changes to the rules. Additionally, training is provided for field personnel who conduct on-site visits to ensure consistency in reporting compliance and department supervisors are made available to assist field personnel before, during and after on-site visits.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

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: Eligible nonpublic schools

- **3301-37-01 Definitions**
 - A crib must meet federal guidelines; an adverse impact would be the cost of new cribs that needed to be purchased by a program.
 - Cribs may range in price from \$130.00 - \$500.00. Most manufacturers offer a discount if an old crib is traded in towards a new purchase. Discounts may also be offered when certain quantities are purchased.
- **3301-37-02 Compliance and Investigation**
 - An application for a required preschool program license must be completed, using administrators' time.
 - Average cost of administrative time: \$10.00-\$18.00 per hour
 - Administrative time needed: one hour to complete a three page application or a one page addendum.
 - The program must submit a copy of a fire inspection; food license or food license exemption; and building approval with its application.
 - The charge for a documented fire inspection approval can range from \$0.00- \$50.00.
 - The charge for a food license ranges from \$300.00 - \$600.00
 - The charge for a documented building approval can range from \$0.00 to approximately \$300.00
 - Reports and records must be submitted as requested by the department, staff and child records must be made available for inspection, and, when appropriate, a corrective action plan must be submitted for violations.

- Average cost of administrative time: \$10.00-\$18.00 per hour
 - Administrative time needed: 4-6 hours per year
- **3301-37-03 Program**
 - Curriculum required
 - A curriculum may be purchased or developed by the program.
 - Purchased curriculum can range in price from \$60.00 to \$200.00.
 - Cots or mats for resting or napping are required for children attending programs for five or more hours per day.
 - Programs may request parents provide a mat for their child, which would offset the cost for a program.
 - Cots cost approximately \$130.00 for a pack of six.
 - Parent/teacher conferences are held twice per year.
 - Average cost of teacher time: \$8.75-\$18.00 per hour.
 - 30 hours of teacher time per year for a class of 20 children.
 - \$360.00-\$540.00 per year.
 - A parent handbook is required.
 - If printed and distributed, the cost of paper and printing would apply at a rate of \$20.00-\$35.00 per year for a class of twenty.
 - The handbook may be posted online, which would offset printing costs.
- **3301-37-04 Staff**
 - In-service Training
 - There can be a cost implication for in-service trainings for staff. However, there are many training opportunities that are free of charge that are provided by the state, including those provided for online. It would be up to the individual program to pay for a given training or to seek one out that is provided for free of charge.
- **3301-37-05 Facility**
 - Building approval to serve children under the age of five years old must be on file.
 - Local building authorities set their own cost.
 - The price of documented approval can range from \$0.00 to approximately \$300.00.
 - Annual fire inspection
 - Local authorities set the price of the fire inspection.
 - The price of documented approval can range from \$0.00- \$50.00.
 - Availability of a working phone.
 - \$25.00 per month is the estimated cost for a land line.
 - Safe indoor space of 35 square feet per child.
 - An eligible nonpublic school must provide classroom space through purchase or rental.
 - Cost will vary depending the location and condition of the facility
 - Safe outdoor space 60 square feet per child.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

- An eligible nonpublic school must provide outdoor space through purchase or rental.
 - Cost will vary depending the location and condition of the property.
 - Any swimming pool or body of water two feet deep or more must be fenced or otherwise made inaccessible.
 - The cost of fencing varies with the type and style selected. Chain link fence costs approximately \$107.00 for each fifty foot segment, not including gates, posts and labor.
 - The surface of any outdoor play space shall offer protection from falls. The cost of rubber mulch for a 20x20 playground space averages \$800.00.
 - Garden mulch is less expensive and would offset this expense.
- **3301-37-06 Equipment and supplies**
 - Indoor furniture/Classroom Materials
 - Average cost to equip one classroom to serve 20 children would range from \$7,000.00 to \$15,000.00 depending on the quality of material purchased, including tables, chairs, storage units, blocks, easels, materials used to learn about mathematics and science, play equipment and supplies. The cost of computers and other electronics is not included.
 - Outdoor equipment
 - Average costs can range from a few hundred dollars for balls, plastic scooters, pails and shovels to \$35,000.00 for elaborate structures and play equipment.
 - Supplies
 - Cleaning and sanitizing supplies for the purpose of disease prevention may total an average of \$50.00 per year per classroom.
 - First aid supplies
 - \$10 to \$75.00 per year per classroom.
 - Protective mats
 - The average cost for a mat is \$120.00. The number of mats needed would depend on the type of indoor climbing equipment, the number of children, and the type of tumbling and play activities the program supports.
 - Electrical outlet covers
 - \$4.00 for 24 plugs
 - Potty chair if needed
 - \$22.00 per potty
- **3301-37-07 Policies and Procedures**
 - Time spent developing policies and procedures
 - The rules provide the structure for the development of policies and procedures needed to meet the requirements for posted documents, parent handbook, staff credentials, and health and safety. Sample documents are

provided for on the department's website that assist a program preparing for an initial licensing visit.

- Average cost of administrative time ranges from \$10.00 to \$18.00 per hour.
- Administrative time needed: 24 hours for initial policies and procedures
 - Cost \$240.00-\$432.00 for initial
- 4 hours per year for updates
 - \$40.00-\$72.00 for updates
- Locked medication storage
 - Lock boxes are available for \$10.00-\$20.00
- **3301-37-08 Child Information**
 - Administrator and teacher time to review information
 - Time reviewing child information: four hours per class of 20 children per month, some of which is teacher time (3 hours per month) and some is administrative time (1 hour per month).
 - Average cost of administrative time: \$10.00-\$18.00 per hour
 - Average cost of teacher time: \$8.75-\$18.00 per hour
- **3301-37-09 School Food Services**
 - Food license
 - Cost \$300.00-\$600.00
 - Meals and snacks
 - Parents may provide snacks or pay for meals and snacks.
 - Discounts and/or reimbursements are available when program is part of the federal food program.
 - If the program supplies the snacks, average daily cost of snacks for a class of 20 children may range from \$10.00-\$14.00 depending on the food that is served
 - Average daily cost of snacks for a class of 12 infants and toddlers may range from \$6.00-\$10.00 if provided by the program.
 - Average daily cost of meals for a class of 20 children may range from \$30.00-\$48.00 depending on the food that is served and economy of scale when class is part of a program with larger number of students.
 - Average daily cost of meals for a class of 12 infants and toddlers may range from \$18.00-\$28.00 if provided by the program.
- **3301-37-10 Behavior management/discipline**
 - No cost implication. This section details requirements that must be in policy.
- **3301-37-11 Management of Communicable Disease**
 - No cost implication. This section details requirements that must be in policy
- **3301-37-12 Diapering**

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

- Diapering supplies, when needed, include :
 - changing table: \$100.00 per class room
 - changing table paper: \$10.30 per roll (14.5inches by 225 feet)
 - gloves: \$59.00 for 1,000 gloves
 - Container that can be sanitized for used diapers: \$20.00-\$80.00

The chart that follows attempts to summarize many of the costs associated with the requirements set forth in the proposed rule. However, the variables created by differences in approach to meeting the requirements on the part of programs do not allow for a range of possible costs of “doing business.” Additionally, some items relate only to start-up and are purchased once and occasionally replaced (e.g. cribs, cots, tables, chairs, changing tables) whereas other cost items (e.g. meals, snacks, gloves, first aid supplies) are purchased on a daily or otherwise frequent basis.

Cost Categories	Partial and approximate costs for Infant/Toddler class for 12 children	Partial and approximate costs for Preschool class for 20 children
Cribs	\$1560.00-\$6,000.00	n/a
Cots	n/a	\$0.00-\$435.00
Completion of the License Application	\$10.00-\$18.00	\$10.00-\$18.00
Fire Inspection	\$0.00-\$50.00	\$0.00-\$50.00
Food License	\$300.00-\$600.00	\$300.00-\$600.00
Building Approval	\$0.00-\$300.00	\$0.00-\$300.00
Reports and Records Maintenance	\$10.00-\$18.00	\$40.00-\$108.00
Curriculum	\$0.00-\$200.00	\$0.00-\$200.00
Parent/Teacher Conferences	\$216.00-\$324.00	\$360.00-\$540.00
Handbook	\$0.00-\$18.00	\$0.00-\$35.00
Protective Playground Cover	\$0.00-\$800.00	\$0.00-\$800.00
Classroom Materials and Supplies	\$4,200.00-\$9,000.00	\$7,000.00-\$15,000.00
Outdoor play Area	\$200.00-\$35,000.00	\$200.00-\$35,000.00
Cleaning Supplies	\$10.00-\$75.00	\$10.00-\$75.00
Tumbling/Protection Mats	\$120.00	\$120.00

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

Outlet covers	\$4.00	\$4.00
Potty Chairs	\$22.00	\$0.00
Policies and Procedures	\$42.00(updates)- \$432.00(initial)	\$42.00(updates)- \$432.00(initial)
Locked Medication Container	\$20.00-\$80.00	\$20.00-\$80.00
Time reviewing Child Information	\$120.00-\$216.00 admin/year \$274.00-\$640.00 (teacher/year)	\$120.00-\$216.00 admin/year \$274.00-\$640.00 (teacher/year)
Meals	\$18.00-\$28.00 per day for a class of 12 infants and toddlers to the extent they consume a diet beyond formula.	\$30.00-\$48.00 per day for a class of 20 preschools
Snacks	\$0.00-\$10.00 dollars depending on what is served and if parents supply.	\$0.00-\$14.00/day for a class of 20 preschoolers depending on what is served and if parents supply the snack
Diapering: changing table, changing table paper, container for soiled diapers, gloves	\$600.00-\$800.00 /year	n/a

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

The rules ensure the basic health and safety of children and are required by statute.

Regulatory Flexibility

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

Yes. Section 3302.07 of the Revised Code authorizes the State Superintendent of Public Instruction to waive specific statutory provisions and rules in order to implement a proposed innovative education pilot program (IPP).

By definition, “innovative education pilot program” means a practice new to the district/building (innovative) that requires a limited period of time (pilot) to implement fully and can be sustained by the district/building after the allowable waiver period has expired.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

While some rules can be waived, pursuant to section 3302.07 of the Revised Code, statutes and rules related to the employment of staff; the education of children with disabilities; and the health and safety of students cannot be waived. Any waiver application for preschool rules must be approved by the department.

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?

A corrective action plan is requested when a violation is found. However, for minor violations, in particular those related to paperwork, on-the-spot technical assistance is offered to help programs achieve compliance.

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

Information is available on the department's website (www.education.ohio.gov) and the newly created *Early Childhood Ohio* website (www.earlychildhoodohio.org). The new site is the home for information related to children birth to five years of age and their families. It provides important updates for programs regarding child development, curriculum, program resources and professional development opportunities.

Technical assistance can be accessed by phone or email from the Office of Early Learning and School Readiness. Consultants who conduct on-site visits provide specific and in-person technical assistance at least annually. Webinars are offered on specific topics and also offer updates on policies and procedures.