

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Education

Regulation/Package Title: Chapter 3301-32 of the Administrative Code regarding school-age child care (SACC) programs

Rule Number(s): 3301-32-01 Definitions ; 3301-32-02 Staff ; 3301-32-03 Staff Ratios and Volunteers; 3301-32-04 Facilities; 3301-32-05 Program and Curriculum; 3301-32-06 Health and Safety ; 3301-32-07 Nutrition ; 3301-32-08 Management of Communicable Disease; 3301-32-09 Discipline; 3301-32-10 Policies and Procedures, Record Keeping, and Administration; 3301-32-11 Licensure and Monitoring; 3301-32-12 Complaint Investigation

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☐ Rescinded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

Business Impact Analysis

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and to that end, should utilize plain language in the development of regulations. CSI requirements apply to these rules because many School Age Child Care programs are operated by non-profit organizations.

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.

The rules establish minimum health and safety standards to be applied to school age child care programs operated by local school district boards of education, county boards of Developmental Disabilities, Educational Service Centers, Joint Vocational Schools, eligible chartered non-public schools and community schools. Rules include those that regulate staff roles and responsibilities, indoor and outdoor facility dimensions and qualities, disease prevention and management, discipline policies and child safety requirements, among others.

The Common Sense Initiative (CSI) applies to the rules under review that regulate programs operated by businesses. For the purpose of CSI, only licensed chartered non-public schools fall under these regulations. If a chartered non-public school chooses not to receive public funds, it may also choose not to be licensed. Therefore, it would not fall under these regulations.

Proposed amendments include:

- ✓ A definition of licensed health care professional was added.
- ✓ Professional development requirements were clarified.
- ✓ Language related to the use of coin operated phones was eliminated.
- ✓ Directions for license application were amended to be consistent with ORC language.
- ✓ Serious risk rules were added to be consistent with the Ohio Department of Education Preschool Licensing rules and the Ohio Department of Job and Family Services Licensing rules.

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

Section 3301.53 of the Ohio Revised Code specifically authorizes the State Board of Education to formulate minimum standards to be applied to school age child care programs in all legislated settings.

3. Does the regulation implement a federal requirement?

Yes. 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.

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- 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?**

No.

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

As per Code of Federal Regulation 45, parts 98 and 99 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 state law and therefore differ state by state.

Ohio law requires all programs receiving public funds be licensed. Therefore, even programs that receive federal funds like the *21st Century* programs that provide opportunities for children who come from economically disadvantaged families and attend low-performing schools, to receive academic supports before, after and in some cases, during school hours are licensed in Ohio. This is the case even though the federal office that oversees 21st Century does not require programs be licensed.

- 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 purpose of these rules is to protect the health and safety of children served in childcare settings. Children rely on parents, teachers and care givers to meet their needs for safe environments in which to grow, develop and thrive. Basic health and safety requirements that are established by these rules 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 that the department uses to gauge the effectiveness of the rules.

An annual report provided to the Governor and General Assembly by department 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 ODE website each year for the public to read.

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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.

Stakeholder Review Meeting August 19, 2014

In July of 2014, superintendents from programs currently licensed by the department were randomly selected, contacted by e-mail 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, and county boards of developmental disabilities, joint vocational schools, community schools and eligible nonpublic schools. The draft rule revision was sent to those who accepted the invitation.

Stakeholders participated in a face-to-face meeting held on August 19, 2014. The stakeholders were representatives selected by superintendents or governing body administrators. A representative from the Ohio After school Network office attended (The Ohio Afterschool Network represents 400 groups and individuals who advocate for afterschool opportunities). In addition, two staff members from the 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. Participants were requested to note fiscal implications, in addition to any concerns or desired changes for each rule.

Chartered Nonpublic Schools

Delaware	Polaris Christian Academy
Hamilton	Summit Country Day
Miami	The Miami Montessori School
Mahoning	Montessori Mahoning Valley
Clermont	Cincinnati Archdiocese
Summit	Emmanuel Christian Academy
Butler	Lutheran Schools Of Ohio
Lucas	Toledo Islamic Academy

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Public Districts and Entities

Lawrence	Dawson-Bryant Local SD
Cuyahoga	Fairview Park City SD
Franklin	Grandview Heights City SD
Montgomery	Kettering City SD
Marion	Marion City SD
Henry	Napoleon Area City SD *
Lorain	Oberlin City SD *
Ottawa	Port Clinton City SD
Preble	Tri-County North Local SD
Shelby	Shelby County Board of DD
Ashtabula	Ashtabula Educational Service Center
Gallia	Gallia-Vinton Educational Service Center
Coshocton	Muskingum Valley Educational Service Center

Community Schools

Franklin	KIPP: Journey Academy
Scioto	Sciotoville Elementary Academy

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

Comments provided, during the August 19, 2014 meeting, were not related to any potential adverse impact on business. All comments from the 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.

Comments resulted in the following changes:

- A definition of a “Licensed health care professional,” was added.
- Language related to in-service training was further clarified
- Language to describe the need for age- appropriate tables and chairs was modified to include equipment and supplies, as well as furniture.

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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* (1). 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). This comprehensive set of health and safety standards used in a majority of states, was a response to many years of effort by advocates for quality child care. (2). In the years that followed, experts repeatedly reaffirmed the need for these standards. (3). Subsequently a second edition and now a third of *Caring for Our Children* was published addressing 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 up-to-date (4). *Caring for Our Children* has been a yardstick for measuring what has been done and what still needs to be done, as well as a technical manual on how to do it.

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

The proposed regulation incorporates the 10 basic health and safety standards highlighted in *Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Out-of-Home Child Care Programs*.

These include: 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 were developed pursuant to section 3301.53 of the Ohio 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 regulated stakeholders must use 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.

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

The Ohio Department of Education licenses childcare programs that are operated by local school districts, educational service centers, boards of Developmental Disabilities, joint vocational schools, eligible chartered non-public schools and community schools.

Therefore *Operating Standards for Ohio School Districts and Schools* (Chapter 3301-35 of the Administrative Code) were considered in the development of the regulation to ensure duplicate rules were not drafted and that SACC policies and school board policies are consistent.

The Ohio Department of Job and Family Services regulates privately-operated for-profit and not for profit child care programs. Representatives from the Ohio Department of Job and Family Services were active stakeholders in the development of the regulation to eliminate duplication and promote 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 the following means: a preparation for on-site visit checklist; sample forms to meet staff and child requirements; a summary of changes to the rules; guidance on health and safety issues and professional development training information.

Training is provided for field personnel who conduct on-site visits to ensure consistency in reporting compliance. ODE Supervisors are available to assist field personnel before, during and following on-site visits. The time, date and results of the visits are verified for timeliness and accuracy.

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 Chartered non-Public Schools

3301-32-01 Definitions

No cost implication.

3301-32-02 Staff

(J-O) *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.

3301-32-03 Staff ratios and volunteers

(F) *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 prepares programs for the 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

3301-32-04 Facilities

- Building approval if program is not located in a school building, (most programs are located in school buildings).
 - 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 landline.

- 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 of 60 square feet per child.
 - An eligible nonpublic school must provide outdoor space through purchase or rental.
Cost will vary depending the location and condition of the property.
 - 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.

3301-32-05 Program and curriculum

- Curriculum required
 - A curriculum may be purchased or developed by the program.
Curriculum can range in price from \$60.00 to \$200.00.
- Indoor furniture/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, bikes, and athletic equipment to \$35,000.00 for elaborate play structures.

3301-32-06 Health and Safety

- 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
 - Locked medication storage .Lock boxes are available for \$10.00-\$20.00

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3301-32-07 Nutrition

- 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 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.

3301-32-08 Management of communicable disease

- No cost implication. This section details requirements that must be in policy.

3301-32-09 Discipline

- No cost implication. This section details requirements that must be in policy.

3301-32-10 Policies and procedures, recordkeeping, and administration

- 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 (3hours per month) and some is administrative time (1 hour per month).Average cost of administrative time: \$10.00-\$18.00 per hour. Administrative time needed: 4-6 hours per year

3301-32-11 Licensure and monitoring

- 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 (if applicable) 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

3301-32-12 Complaint investigation

- No cost implication.

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. art supplies, puzzles and books) whereas other cost items (e.g. meals, snacks, first aid supplies) are purchased on a daily or otherwise frequent basis. There are no new costs generated by this proposed rule.

Cost Categories	Partial and approximate costs for 20 children
Completion of the License Application	\$10.00-\$18.00
Fire Inspection	\$0.00-\$50.00
Food License	\$300.00-\$600.00
Building Approval (if applicable)	\$0.00-\$300.00
Reports and Records Maintenance	\$40.00-\$108.00
Protective Playground Cover	\$0.00-\$800.00
Materials and Supplies	\$7,000.00-\$15,000.00
Outdoor play Area	\$200.00-\$35,000.00
Cleaning Supplies	\$10.00-\$75.00

Policies and Procedures	\$42.00(updates)- \$432.00(initial)
Locked Medication Container	\$20.00-\$80.00
Time reviewing Child Information	\$120.00-\$216.00 admin/year \$274.00-\$640.00 (teacher/year)
Meals	\$30.00-\$48.00 per day for a class of 20 preschools

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Snacks	\$0.00-\$14.00/day for a class of 20 preschoolers depending on what is served and if parents supply the snack
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17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The rules proposed 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. Programs not receiving public funds may choose not to be licensed. According to 3301.58 while preschool programs must be licensed, “A school district board of education, county DD board, or eligible nonpublic school **may** obtain a license under this section for a school child program.”

However, 3301.59 goes on to say, “No school child program may receive any state or federal funds specifically allocated for school child programs unless the school child program is licensed by the department of education pursuant to sections [3301.52](#) to 3301.59 of the Revised Code or by the department of job and family services pursuant to Chapter 5104. of the Revised Code.

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 *Ohio Department of Education* website (www.education.ohio.gov). 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.

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