



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Carrie Kuruc**, Director

### Business Impact Analysis

Agency Name: Ohio Department of Education

Agency Contact Info: Wendy Grove ([wendy.grove@education.ohio.gov](mailto:wendy.grove@education.ohio.gov))

Regulation/Package Title: Preschool children eligible for special education

Rule Number(s): 3301-51-11

Date: 6/10/19

**Rule Type:**

☐ New

☐ Amended

☐ 5-Year Review

☐ Rescinded

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **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.*

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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.

The key amendments to this revision include clarifying definitions, updating the rule to align with preschool special education ratio as required by House Bill 49 (changed from 1 teacher for every 6 students to 1 teacher for every 8 students), and complying with other applicable law and rules. We deleted 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, we added language clarifying the federal requirement to provide a continuum of placement options from least restrictive to most restrictive environments.

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

Ohio Revised Code Sections: 3301.07, 3323.02, 3323.07, 3323.08

**3. Does the regulation implement a federal requirement? 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?**

*If yes, please briefly explain the source and substance of the federal requirement.*

Yes, the rule implements Part B Section 619 of the Federal Individuals with Disabilities Education Act (<https://www2.ed.gov/programs/oseppsg/legislation.html>). Yes, the rule is being amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program.

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

This rule does not exceed federal law.

**5. 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 public purpose of the rule is to implement Part B Section 619 of the Federal Individuals with Disabilities Education Act for Ohio local educational agencies, educational service centers, and county boards of developmental disabilities in identifying and serving preschool children with disabilities.

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

The Agency monitors compliance with the rule with requires data reporting from serving entities and with desk audits and onsite visits.

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## **Development of the Regulation**

- 7. 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.*

Please see the attached document.

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

Please see attached document. After each stakeholder engagement activity, the Agency revised the rule language and shared with stakeholders. This process took over eighteen months.

- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

We do not require measurable outcomes of compliance with this rule, the US Department of Education sets all measures for reporting compliance.

- 10. 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?**

The Agency considered many options for implementing sections of the proposed rule, which were discussed at length with numerous stakeholders. One example was to increase the minimum number of service hours for preschool children served in center-based settings from 10 hours per week to 12.5. This was not implemented due to the increase in financial burden that it would pose without a corresponding increase in funding.

- 11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

No, the US Department of Education requires states to adopt rules and processes to implement the Individuals with Disabilities Education Act, which is what this rule does. The processes, including timelines, required pieces of documentation, and reporting are all mandated by the federal law.

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

A thorough review of the state and federal law was done by the Agency's legal team to ensure that any duplications that exist in the rule were deleted in its revision.

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**13. 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.**

The Preschool Special Education team at the Agency will share the updated rule via webinar to its technical assistance network, the State Support Teams. It will record the webinar and make it publicly available. The team will create companion documents, including an implementation guide, Frequently Asked Questions, and Job Aids for school administrators, disabilities coordinators, and preschool teachers.

As it does now, the Agency will provide technical assistance through conferences with school personnel, telephone, email, and face to face meetings as requested by any entity serving children with disabilities. The Agency will continue its annual examination of data reported and identify entities at risk for non-compliance through desk reviews and on-site visits and inspections. Inspection reports, including those that result in identification of non-compliance, are posted on site.

**Adverse Impact to Business**

**14. 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.*

The rule revision does not add any costs to the operation costs already in existence for the public entities for whom the rule applies. The funding of local educational agencies for preschool special education is articulated in Ohio Revised Code 3317.0213. Educational service centers and county boards of developmental disabilities are paid by the district of residence where the children they are serving live. There are minimal expected adverse impacts of this rule for any Ohio business community.

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

Not applicable.

### **Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

No.

**17. 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?**

Not applicable.

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

Not applicable.