



## Common Sense Initiative

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

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### Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Education

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Ohio's Operating Standards for the Education of Children with Disabilities

Rule Number(s): O.A.C. 3301-51-01, O.A.C. 3301-51-02, O.A.C. 3301-51-03, O.A.C. 3301-51-04, O.A.C. 3301-51-05, O.A.C. 3301-51-06, O.A.C. 3301-51-07, O.A.C. 3301-51-08, O.A.C. 3301-51-09, O.A.C. 3301-51-10, O.A.C. 3301-51-20, O.A.C. 3301-51-21

Date of Submission for CSI Review: 10/26/2021

Public Comment Period End Date: 10/26/2021-11/3/2021

**Rule Type/Number of Rules:**

New/\_\_\_ rules

Amended/ 12 rules (FYR? Y)

No Change/\_\_\_ rules (FYR? \_\_\_)

Rescinded/\_\_\_ rules (FYR? \_\_\_)

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 regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing

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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.

### **Reason for Submission**

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. ☒ Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. ☒ Requires specific expenditures or the report of information as a condition of compliance.
- d. ☐ Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

### **Regulatory Intent**

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

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

**3301-51-01 Applicability of requirements and definitions:** This rule states the purpose of Chapter 3301-51, to whom the regulations apply and defines terms located throughout Chapter 3301-51.

Proposed amendments:

The rule included a new term “educational agency,” new language regarding due process decisions issued by an impartial hearing officer and implemented and updated current definitions to reflect current legal terminology. Several new definitions were added to define the language in other rules.

**3301-51-02 Free appropriate public education:** This rule describes the obligations of educational agencies, including community schools, for providing a free appropriate public education to students with disabilities. Most of this rule remains the same as is currently in effect with a few areas reworded for clarity.

Proposed amendments:

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The rule included the new term “educational agency” to reflect added language in 3301-51-01.

**3301-51-03 Child find:** This rule addresses a school district’s and community school’s responsibilities for ensuring all children with disabilities residing within the state local education agencies are identified, located, and evaluated as required by the Individuals with Disabilities Education Act (IDEA).

Proposed amendments:

The rule included the new term “educational agency” to reflect added language in 3301-51-01. Citations were added to the rule where appropriate.

**3301-51-04 Confidentiality:** This rule addresses the requirements for educational agencies to ensure protection of the confidentiality of any personally identifiable information in the collection, use, storage, disclosure, retention and destruction of that information, and to take appropriate action that affords parents the opportunity to examine education records.

Proposed amendments:

- The terms “school district, county board of developmental disabilities and “other” are eliminated so that only “educational agency” remains which encompasses all educational agencies.
- The acronym “FERPA” replaces the lengthier “Family Educational Rights and Privacy Act.”
- The date in subsection (M)(1) was updated to align with the federal date.
- Subsections (Q)(1) and (Q)(2) were consolidated into one section.
- Subsection (Q)(3) Disciplinary Information is a new section. This new section adds the requirement that an educational agency may only transmit student records to the extent permitted by FERPA.

**3301-51-05 Procedural safeguards:** This rule addresses the procedural safeguards that protect the rights of parents and students with disabilities and ensures parents and educational agencies have a variety of options for resolving disputes.

Proposed Amendments:

The proposed revisions to the rule were intended to update language and align the rule with federal regulations.

- “Dispute resolution” replaced “Conflict resolution”
- “Superintendent’s or designee’s” was added to “decision”
- “Immediately” was added to the notification of insufficiency determination
- “Educational agency” was replaced with “school district”
- Acronyms were replaced
- Citations referencing other subsections were removed
- Surrogate parent duties and assignments were stated

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**3301-51-06 Evaluations:** This rule describes the obligations public schools, including community schools, have for evaluating and identifying students to determine if they qualify as a student with a disability under the IDEA.

Proposed Amendments:

A few paragraphs are reworded for clarity. However, a new section was added to provide a timeline within which a school district must accept an evaluation or conduct their own evaluation when a student transfers from another school district in the state. See (D)(3). The language “scientifically based” was replaced with “evidence based” throughout to comply with language in the federal Every Student Succeeds Act.

**3301-51-07 Individualized education program (IEP):** This rule describes the student with disabilities’ individualized education plan and what it must contain. It provides the structure and the definitions of what types of specially designed services, accommodations, modifications and goals a student with a disability will receive when they qualify for special education.

Proposed amendments:

The rule included the new term “educational agency” to reflect added language in 3301-51-01. The acronym IEP was replaced with “individualized education program.”

**3301-51-08 Parentally placed nonpublic school children:** This rule describes the obligations of public schools when a child is parentally placed in a nonpublic school. It describes the obligations of the district of residence for Child Find and drafting an IEP if the student participates in a scholarship program. It describes the obligations of the district where the nonpublic school is located to evaluate students attending a nonpublic school within their boundaries, regardless of whether that student resides in their district. It also describes the requirements for equitable services for those students.

Proposed amendments:

Proposed changes consist primarily of the removal of language that was confusing or that is no longer required by state and federal laws, such as references to highly qualified teachers. In addition, language regarding state assessments was changed to match current graduation requirements and language regarding the scholarship programs was removed as duplicative of the scholarship rules.

**3301-51-09 Delivery of services:** This rule ensures that students receive appropriate supports and services in their least restrictive environment. The key components of the rule include placement and the continuum of alternate places, least restrictive environment, the role of preschool and school-age services providers, the development and qualification of personnel, transition services, service provider workload determination for delivery of services and housing, facilities, materials and equipment for special education programs.

Proposed amendments:

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Proposed amendments to the rule include a technical edit, renumbering of some provisions due to proposed amendments, updating of citations and the following:

- a) Updating terminology utilized in the rule to be consistent throughout the chapter and with the IDEA. Terminology changes include: ‘school district’ became ‘educational agency’, ‘regular education children’ became ‘children without disabilities’, ‘highly qualified’ became ‘properly certified’, ‘children who are not disabled’ became ‘children without disabilities’, ‘nondisabled children’ became ‘children without disabilities’.
- b) Acronyms were written out for clarification. Acronyms changes include ‘IEP’ became ‘individualized education program’, ‘FAPE’ became ‘free appropriate public education’, and ‘LRE’ became ‘least restrictive environment’.
- c) Removal of references to the no longer relevant terms including districts strategic planning process, highly qualified and No Child Left Behind.
- d) Moved language pertaining to adapted physical education from related services to the specially designed instruction part of the rule.
- e) Transition section was changed to include language from the memo that was part of the previous operating standards.

**3301-51-10 Transportation of children with disabilities:** This rule ensures the safe means of transportation for students with disabilities to and from their education setting. The rule provides general and eligibility requirements for transportation, defines terms specific transportation and states transportation requirements for state residential schools.

#### Proposed amendments

The key amendments to this rule include clarification and updates to the language and the removal of duplicative language in the IDEA, Title 34, Part 300 of the Code of Federal Regulations, Ohio Revised Code Chapter 3323, and Ohio Administrative Code Chapters 3301-51 and 3301-83.

**3301-51-20 Admissions, transfer, suspension, and expulsion standard for the Ohio state schools for the blind and deaf addresses the admission and discipline standard for the Ohio state school for the blind and the Ohio school for the deaf:** This rule includes the requirements for the evaluation of children who are deaf or hard of hearing and blind or visually impaired for admission into the schools, requirements and procedures for placement at the state schools, the placement appeal process, the dismissal process, and the suspension, expulsion and temporary removal policies and procedures for children at the state schools.

#### Proposed amendments

Proposed amendments to the rule include a technical edit, terminology revision, updating of citations to state and federal laws, and addition of a definition section, which caused a renumbering of the rule sections. Revisions include:

- a) The inclusion of both the expanded and acronym for common terms. These include “IEP” to “individualized education program,” “FAPE” to “free appropriate public education,” and “LRE” to “least restrictive environment.”

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- b) Updated terminology to be consistent with the rest of the chapter and the IDEA. Changes include: ‘students’ became ‘children’, ‘student’s’ became ‘child’s’, ‘family’s’ became ‘parent’s’, ‘student’ became ‘child’, ‘parent, guardian’ became ‘parent’, ‘parent, guardian, custodian’ became ‘parent’, ‘assessment’ became ‘evaluation’ and ‘formalized’ became ‘approved’.
- c) Addition of a definition section, which includes definitions consistent with those found in the remainder of the chapter. Definitions in the section include deaf/hard of hearing, deaf-blindness, deafness, hearing impairment, parent, district of residence, and visual impairment.
- d) Updated language on the residential superintendent to clarify that there can be a superintendent both at the blind and the deaf schools.

**3301-51-21 Providing instructional material to children with visual impairments and others with print disabilities that are listed for sale by publishers with the superintendent of public instruction:** This rule requires instructional materials to children with visual impairments and others with print disabilities that are listed for sale by publishers with the superintendent of public instruction addresses the requirements for textbooks, instructional materials and technology standards for accessibility. It also provides requirements for pricing of textbooks and print materials as well as the state requirements for the National Instructional Materials Accessibility Standard (NIMAS).

#### Proposed amendments

The revisions to this rule include a technical language edit, a re-ordering of information in the rule, as well as adding of a definition or language. A definition for “instructional materials and technologies” was created to provided clarification of items in the rule. A citation for the Ohio Revised Code section mentioned in the rule was added. In addition, language in subsection (D) was changed to include the accessibility standards set forth in Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. 749 and 26 C.F.R. 2294.

### **3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

#### **3301-51-01 Applicability of requirements and definitions:**

Authorized By: O.R.C. 3301.07(J), 3323.01, 3323.02, 3323.07

Amplifies: O.R.C. 3301.07(J), 3323.01, 3323.02, 3323.07

#### **3301-51-02 Free appropriate public education:**

Authorized By: O.R.C. 3301.07, 3301.07(J), 3323.02, 3323.07

Amplifies: O.R.C. 3323.02, 3323.07

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**3301-51-03 Child find:**

Authorized By: O.R.C. 3301.07, 3301.07(J), 3323.02, 3323.07

Amplifies: O.R.C. 3323.02, 3323.07

**3301-51-04 Confidentiality:**

Authorized By: O.R.C. 3301.07, 3301.07(J), 3323.02

Amplifies: O.R.C. 3323.02, 3323.07

**3301-51-05 Procedural safeguards:**

Authorized By: O.R.C. 3301.07(J), 3323.05

Amplifies: O.R.C. 3323.04, 3323.05, 3323.051

**3301-51-06 Evaluations:**

Authorized By: O.R.C. 3301.07, 3301.07(J), 3323.03

Amplifies: O.R.C. 3323.03

**3301-51-07 Individualized education program (IEP):**

Authorized By: O.R.C. 3301.07, 3301.07(J), 3323.04

Amplifies: O.R.C. 3323.04

**3301-51-08 Parentally placed nonpublic school children:**

Authorized By: O.R.C. 3301.07, 3301.07(J), 3323.041, 3310.64

Amplifies: O.R.C. 3323.041

**3301-51-09 Delivery of services:**

Authorized By: O.R.C. 3301.07, 3301.07(J), 3323.02, 3323.04, 3323.07

Amplifies: O.R.C. 3323.02, 3323.04, 3323.07, 3323.11

**3301-51-10 Transportation of children with disabilities:**

Authorized By: O.R.C. 3301.07, 3327.01

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Amplifies: O.R.C. 3327.01, 4511.76

**3301-51-20: Admissions, transfer, suspension, and expulsion standard for the Ohio state schools for the blind and deaf addresses the admission and discipline standard for the Ohio state school for the blind and the Ohio school for the deaf:**

Authorized By: O.R.C. 3301.07

Amplifies: O.R.C. 3301.07

**3301-51-21 Providing instructional material to children with visual impairments and others with print disabilities that are listed for sale by publishers with the superintendent of public instruction:**

Authorized By: O.R.C. 3301.07, 3323.02

Amplifies: O.R.C. 3323.02, 3329.01

- 4. 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.**

**3301-51-01 Applicability of requirements and definitions:** Yes. The federal Individuals with Disabilities Education Act (IDEA): IDEA ensures a free appropriate public education is available to all children with qualifying disabilities under the Act. To receive federal special education funding, Ohio must develop special education statutes and regulations that are consistent with IDEA.

**3301-51-02 Free appropriate public education:** Yes. The federal IDEA requires all students with disabilities to be provided with a free appropriate public education.

**3301-51-03 Child find:** Yes. The federal IDEA and its implementing regulations, 34 CFR Parts 300 and 301 Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities; Final Rule (August, 2006). The IDEA requires that children with disabilities residing within the district are identified, located, and evaluated as required by the Act.

This rule addresses the requirements for:

- Educational agencies to identify, locate, and evaluate all children in need of special education and related services and to adopt written policies and procedures for implementation of the rule.

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- The use and definition of the term “developmental delay.”
- Determining disproportionality in identification, placement, and discipline of children with disabilities.
- Special education data reporting through the Agency’s Education Management and Information System (EMIS).

**3301-51-04 Confidentiality:** Yes. 34 C.F.R. 300.610-300. 628 (October 13, 2006) states:

Educational agencies must take appropriate action to ensure the protection of the confidentiality of any personally identifiable data, information and records collected or maintained by the educational agency.

Educational agencies must permit parents to inspect and review any educational records relating to their children that are collected, maintained or used by the agency.

**3301-51-05 Procedural safeguards:** Yes. IDEA regulations 34 CFR 300.154, 300.300, and 300.500 to 300.537

**3301-51-06 Evaluations:** Yes. IDEA which requires all students with disabilities to be located and evaluated and requires public schools to provide them with a free appropriate public education.

**3301-51-07 Individualized education program (IEP):** Yes. The IDEA which requires all students with disabilities to be located and evaluated and requires public schools to provide them with a free appropriate public education.

**3301-51-08 Parentally placed nonpublic school children:** Yes. The IDEA which requires all students with disabilities to be located and evaluated and requires public schools to provide proportionate share services to students who are parentally placed in a nonpublic school.

**3301-51-09 Delivery of services:** Yes. The IDEA requires the following in the delivery of service encompasses least restrictive environment ( 34. CFR 300.115), placements (34 C.F.R 300.116), continuum of alternate placements (34 C.F.R. 300. 115) and qualifications and development of personnel (34 CFR 300.156).

**3301-51-21 Providing instructional material to children with visual impairments and others with print disabilities that are listed for sale by publishers with the superintendent of public instruction:** Yes, IDEA requires access to instruction materials for students with disabilities that have visual impairments and print disabilities. (34 CFR 300.172).

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**3301-51-20 Admissions, transfer, suspension, and expulsion standard for the Ohio state schools for the blind and deaf addresses the admission and discipline standard for the Ohio state school for the blind and the Ohio school for the deaf:** Yes. The IDEA and Ohio Revised Code require states to establish rules or standards for the provision of special education and related services for all children with disabilities who are at least three years of age and less than twenty-two years of age.

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

**3301-51-01 Applicability of requirements and definitions:** IDEA permits states to clarify or expand on the federal requirements. The rationale for doing so is to provide timelines for action required by school districts and to provide additional clarity and protections to the parents of students with disabilities.

**3301-51-02 Free appropriate public education:** The IDEA requires local education agencies to provide extended school year services to students with disabilities as necessary to provide a free appropriate public education. The Ohio Administrative Code requires Individualized Education Program teams to determine the need for extended school year services based on the standard of regression and recoupment. This standard was set by the Sixth Circuit Court of Appeals.

**3301-51-03 Child find:** There are no regulation provisions in the Ohio rule for Child Find, not specifically required by the federal IDEA or its implementing regulations.

**3301-51-04 Confidentiality:** Disciplinary information- “An educational agency shall include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children. When a child transfers from one educational agency to another, the transmission of any of the child’s records must include both the child’s current IEP and any statement of consent or previous disciplinary action that has been taken against the child.” OAC 3301-51-04(Q)

This regulation then states that the statement shall specify the circumstances that resulted in the disciplinary action taken if the disciplinary action was taken because the student carried or possessed a weapon at school, knowingly possessed or used illegal drugs, or inflicted serious bodily injury upon another person while at school.

Confidentiality Subsections (Q)(1) and (Q)(2) have been combined to eliminate duplication:

- This section removed the requirement of an educational agency to include in the disciplinary records that it transmits of a child with a disability a statement of current or previous disciplinary action that has been taken against a child. This section was removed here **because it was also in Subsection (Q)(2).**

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- This action consolidated Subsections (Q)(1) and (Q)(2) and avoided duplication.

**3301-51-05 Procedural safeguards:** The regulation provides the age of majority under state law.

**Rationale:** The federal law states that a state may provide when a child with a disability reaches the age of majority under state law, that applies to all children, the educational agency must provide notice to both the child and the parents and all rights accorded to parents under IDEA transfer to the child. 34 CFR 300.520

The regulation provides that informed parental consent must be obtained before making a change of placement of a child with a disability

**Rationale:** This rule has been in place since 2002 and consequently has become an established practice in educational agencies in Ohio. The provision that parental consent is required to change the educational placement of a child was proposed to be removed. Due to strong stakeholder and public comment to this provision, the decision was made to leave the provision as it is in the rules. There was also support from stakeholders and public comments to remove the provision, but the opposition to removing it was much stronger.

The regulation provides for the assignment of and describes duties of surrogate parents.

**Rationale:** Federal law requires that each educational agency must ensure that the rights of children are protected when no parent can be identified or located, the child is a ward of the state or is an unaccompanied homeless youth. 34 CFR 300.519

The regulation provides additional prior written notice requirements.

**Rationale:** Federal law provides that written notice must be given to the parents of a child with a disability a reasonable time before the school district of residence:

- a) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of free appropriate public education to the child; or
- b) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of free appropriate public education to the child.

That prior written notice must be provided when the educational agency proposes to initiate or change. The policy of the Ohio Department of Education, Office for Exceptional Children is that thirty days is a “reasonable” time. 34 CFR 300.503.

The regulation provides for administrative reviews.

**Rationale:** This section is regulated under the Ohio Revised Code (ORC) 3323.05(D)

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The regulation provides that if mediation requires changes in an IEP, the IEP team shall be notified and the IEP team will convene to incorporate the changes into the IEP within twenty school days.

**Rationale:** The Agency has the authority to develop mediation procedures under the Ohio Revised Code (ORC) 3323.05(F). The language was updated for clarity and understanding that the IEP team will convene to incorporate changes into the IEP as a result of mediation.

The regulation states that upon a request for a due process hearing, the Agency will appoint an impartial hearing officer and states the duties of the impartial hearing officer.

**Rationale:** Authority is given to the Agency under Ohio Revised Code 3323.05(G) to develop standards and procedures for due process hearings.

The regulation states the procedures for determining the sufficiency of the due process complaint.

**Rationale:** Federal law regulates procedures for sufficiency complaints in due process hearings. 34 CFR 300.507(d) This regulation provides additional procedures to assist parents.

The regulation adds the requirements of an impartial hearing officer to be an attorney licensed to practice law in Ohio and successfully completed all of the Agency's training and that the Agency may require that impartial hearing officers and state level review officers reapply for eligibility to remain on the list for appointments.

**Rationale:** The additional requirements are authorized by Ohio Revised Code 3323.05(G).

The regulation provides for a state level appeal process for due process decisions.

**Rationale:** The appeal process is authorized by the Ohio Revised Code 3323.05(H).

The regulation provides that most costs incurred in a hearing requested by the parent shall be assumed by the school district of residence.

**Rationale:** This section is regulated by the Ohio Revised Code at 3323.05.

The regulation provides procedures for expedited due process hearings.

**Rationale:** Authority is given by federal law at 34 CFR 300.533.

The regulations provide for notice of availability of scholarship notification.

**Rationale:** Authority in the Ohio Revised Code at 3310.

**3301-51-06 Evaluations:** Timelines and evaluation procedures comply with federal requirements. However, the addition of timelines to either accept a transfer evaluation or conduct

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their own are not specified in federal regulation. This timeline was added to ensure students who transfer from one Ohio district to another get appropriate services in a timely manner upon transfer.

**3301-51-07 Individualized education program (IEP):** The requirements in the individualized education program rule comply with federal requirements. The IDEA requires the Agency to maintain these rules. This rule does require the educational agency to adopt and implement policies and procedures to ensure individualized education programs are developed and explains what should happen if a child is educated somewhere other than the school district of residence. These are in compliance with IDEA's requirement that the Agency ensure all districts have these components in place. In addition, IDEA only requires an IEP be implemented "as soon as possible" following an evaluation. This rule provides a specific timeline to ensure that is followed. This rule further requires a comprehensive eye examination which is not required by federal law. However, this eye exam is required by ORC 3323.19.

**3301-51-08 Parentally placed nonpublic school children:** The only part of this rule that exceeds the federal requirements are those required for implementing the Autism Scholarship program and Jon Peterson Special Needs Scholarship, which are required by state law.

**3301-51-09 Delivery of services:** The IDEA and Ohio Revised Code require states to establish rules or standards for the provision of special education and related services for all children with disabilities who are at least three years of age and less than twenty-two years of age. Ohio Administrative Code 3301-51-09 establishes these provisions.

**3301-51-10 Transportation of children with disabilities:** Federal laws only exist for the transportation of students with disabilities; there are no federal regulations for the transportation of general education students, as this is left up to the individual states. Rule 3301-51-10 addresses the requirements laid out in IDEA (20 U.S. Code 1400 et seq.) and the transportation subsection of the federal related services law (34 CFR 300.34 (c)(16)) for the transportation of children with disabilities.

**3301-51-20 Admissions, transfer, suspension, and expulsion standard for the Ohio state schools for the blind and deaf addresses the admission and discipline standard for the Ohio state school for the blind and the Ohio school for the deaf:** The IDEA and Ohio Revised Code require states to establish rules or standards for the provision of special education and related services for all children with disabilities who are at least three years of age and less than twenty-two years of age. O.A.C. 3301-51-20 establishes provisions for the special education and related services for students who attend the Ohio state schools.

**3301-51-21 Providing instructional material to children with visual impairments and others with print disabilities that are listed for sale by publishers with the superintendent of public instruction:** ORC 3329.01 allows the Department to require a list of textbooks for all students.

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)?

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O.A.C. 3301-51-01 through O.A.C. 3301-51-10 ensure students with disabilities receive a free appropriate public education and that all provisions of federal regulations in IDEA, ORC 3301.07(J), and ORC Chapter 3323 are implemented and monitored.

3301-51-20 Admissions, transfer, suspension, and expulsion standard for the Ohio state schools for the blind and deaf addresses the admission and discipline standard for the Ohio state school for the blind and the Ohio school for the deaf: to provide requirements for the admission, transfer, suspension, and expulsion for students that will or do attend the Ohio state schools. Additionally, to ensure provisions for special education and related services for students who attend the Ohio state schools.

3301-51-21 Providing instructional material to children with visual impairments and others with print disabilities that are listed for sale by publishers with the superintendent of public instruction:

By providing instructional materials to children with visual impairments and others with print disabilities that are listed for sale by publishers with the superintendent of public instruction addresses the requirements for textbooks, instructional materials and technology standards for accessibility. It also provides requirements for pricing of textbooks and print materials as well as the state requirements for the National Instructional Materials Accessibility Standard (NIMAS).

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

The Office for Exceptional Children has federal reporting requirements that are submitted to the US Department of Education. There are also special education indicator, on-site monitoring and fiscal monitoring of programs within the Office for Exceptional Children to check for educational agency compliance with the provision of a free appropriate public education to students with disabilities to include policies, procedures and timelines. In addition, anyone with knowledge of a possible violation can file a formal written complaint with the Office for Exceptional Children. The Office for Exceptional Children will then investigate compliance. Finally, achievement of students with disabilities is measured with the Special Education Profiles, Special Education Ratings and the State Report cards.

**8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

No.

**Development of the Regulation**

**9. 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.*

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- May 16, 2019, Superintendents Advisory Committee
- May 21, 2019, State Support Team Directors Meeting
- February 24-25 & 28, Stakeholder Roundtable Meetings; Ohio Coalition for the Education of Children with Disabilities, Disability Rights Ohio, representatives from community schools, School Psychologists, Ohio Association of Pupil Service Administrators, Teacher Education Professors, Speech and Hearing Professionals Board, Educational Service Centers, Ohio Jewish Communities, non-charter, non-tax schools, Ohio Association of Secondary School Administrators, Ohio Center for Autism and Low Incidence (OCALI), Lutheran Schools of Ohio, Ohio Middle Level Association, Catholic Conference of Ohio, Association of Christian Schools International, Occupational Therapists, Physical Therapists, Ohio Association of Elementary School Administrators.
- February 26, 2020, Ohio School Boards Association
- May 9, 2019 & February 27, 2020, State Advisory Panel for Exceptional Children
- March 18, 2020, State Support Team Directors reviewed rules through email
- June 15, 2020 through July 31, 2020, rules posted for public comment
- September 24, 2020, State Advisory Panel for Exceptional Children
- October 6, 2020, Virtual Stakeholder Roundtable Meeting for the Admission, Transfer, suspension and expulsion standard for the Ohio state schools for the blind and deaf rule
- December 7-14, & 21, 2020, virtual stakeholder Roundtable meetings for the Operating Standards for the Education of Children with Disabilities; Ohio Occupational Therapy Association, Disability Rights Ohio/Legal aid, School Psychologist Group, Disability Advocacy Alliance, Autism Society
- January 20, 2021, State Support Team Directors Meeting; Facilitated discussion on Admission, transfer, suspension and expulsion standard for the Ohio state schools for the blind and deaf
- August 20, 2021, Communication by email to community school sponsors to provide feedback on business impact analysis form; adverse impact to business
- September 9, 2021, Follow up with community school sponsors regarding responding to Business impact analysis form during Bi-weekly sponsor call

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

**3301-51-01 Applicability of requirements and definitions:** Stakeholder input included requests to add, remove or clarify definitions. Stakeholder input also included changes to grammar, spelling, and the organization of the rule. Input resulted in the addition of definitions, clarification to definitions and corrections to grammar.

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**3301-51-02 Free appropriate public education:** Stakeholders provided a variety of comments through both stakeholder meetings and through public comment. Feedback includes the following:

Comments provided by stakeholders requested clarification of definitions. The definitions in question are either defined by federal law or are defined elsewhere in the Operating Standards for the Education of Children with Disabilities.

Stakeholders requested that a free appropriate public education be further defined in the regulations for preschool students. A free appropriate public education for preschool students is defined in federal law and will not be revised in the regulations. Guidance will be provided to stakeholders who requested clarification of a free appropriate public education for students placed in residential facilities.

Some stakeholders requested information about those students whose parents have accepted the Jon Peterson Special Needs Scholarship, the Autism Scholarship or whose students are homeschooled. Students who accept one of the scholarships or are homeschooled are not entitled to a free appropriate public education from the educational agencies.

Questions about hearing aids and cochlear implants are part of federal language and cannot be changed. Stakeholders inquired about the possibility of adding mandatory removal of disruptive students from public educational agencies to the regulation. This is contrary to federal regulations and cannot be changed.

**3301-51-03 Child Find:** Stakeholders provided a variety of comments through both stakeholder meetings and through public comment. Feedback includes the following:

Stakeholders and public individuals provided comments about Comprehensive Early Intervening Services. Commenters asked for clarifying definitions of various terms in the rule. The Agency did not make changes, as Comprehensive Coordinated Early Intervening Services are explained in the Disproportionality resource documents on the Agency's web site. Other language comes from the federal rules, 34 C.F.R. Part 300 and the Ohio Revised Code sections 3321.02, 3323.07, and 3314.19.

Questions were received regarding Child Find as applied to the Jon Peterson and Autism Scholarship programs. Application of this rule to children to the Jon Peterson or Autism Scholarship programs is covered in rule 3301-51-08 Parentally placed nonpublic school children.

Some comments concerned Child Find in general. This feedback is being considered as the Agency develops guidance documents for all the rules in the Ohio Operating Standards for the Education of Children with Disabilities.

There were comments focused on the definitions of various terms and phrases within the rule. All referenced terms or phrases are either defined in Rule 3301-51-01 Definitions or are part of state or federal language and so defined.

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There were comments referred to increasing the age range for Developmental Delay from three through five years of age, to three through nine years of age. This stipulation for preschool children with a disability is contained in the Ohio Administrative Code, Ohio Department of Education 3301-51 (C)(6) as ages 3 through 5, and cannot be adjusted without a legislative change.

There were comments centered around the rule language for disproportionality asking for clarity of the rule language and process. Disproportionality is further explained and clarified on the Agency's website. Additional comments focused on revision of the significant disproportionality risk ratio for discipline from 3.5 down to 2.5 to better align with the risk ratios established by other states. This change was made for the 2020-2021 school year in order to more fully identify and address racial disparities in special education across the state.

There were comments which asked for clarity in the difference between district of residence and the more general term of educational agency. The definitions for each are contained in Rule 3301-51-01 Definitions.

There were four inquiries concerning questions around evaluations for students in foster placement, evaluation timelines, and evaluations in community schools. Comments related to evaluations are addressed in 3301-51-06, the Evaluations rule.

There were comments asking for clarity around issues of putting into practice Child Find policies for nonpublic schools. Nonpublic schools are addressed in rule 3301-51-08 Parentally placed nonpublic school children.

There were comments asked for clarity around the use of "rule of construction" in the Ohio Operating Standards for the Education of Children with Disabilities. Rule of construction comes from federal language in the IDEA and applies in different contexts depending upon each section of the Ohio Operating Standards for the Education of Children with Disabilities where Rule of Construction appears.

There were comments suggesting active training for all stakeholders, including parents and educational agencies, around the policies and practices for Child Find. The Agency will consider this feedback when developing guidance to implement the revised rule.

**3301-51-04 Confidentiality:** Stakeholders provided a variety of comments through both stakeholder meetings and through public comment. Feedback includes the following:

Requests to define access rights to student personally identifiable information: The Agency did not make changes to this rule as access rights are defined by the Family Educational Rights and Privacy Act (FERPA) which is cited in this rule, (34 C.F.R. Part 99). Requests for mandating training related to educational records: The Agency did not make changes to this rule as mandated training is already in this rule at Ohio Administrative Code (OAC) 3302-51-04(N)(3)(Safeguards).

Requests that the Evaluation Team Report be included with disciplinary information in record transfers: The Agency did not make changes to this rule as transmittal of all records, including the Evaluation Team Report is addressed in another section of the rules, OAC 3301-51-07(K)(7).

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Requests related to educational records such as adding a timeline for transfers, providing a policy on video records, providing examples and mandating training: The Agency did not make changes to this rule as the requested provisions are in federal law, are determined by local educational agencies or are mandated by this section of the rules at OAC 3301-51-04(N)(3).

Requests for more description of records hearing procedures: The Agency did not make changes to this rule as this is in federal law. Requests to add record retention timelines: No timelines were added as this is a local educational policy under Ohio Revised Code (ORC) 149.41 (School district records commission-educational service center records commission.)

### **3301-51-05 Procedural safeguards:**

Stakeholders provided a variety of comments through both stakeholder meetings and through public comment. Feedback includes the following:

Many requests were made to clarify the language used in the rule beyond the meaning of the federal language. Requests including clarification of definitions of terms used including, the 10-day rule for disciplinary change of placement, “district of residence” from “educational agency,” Independent Educational Evaluations, the language in expedited due process proceedings, the start of the disclosure timeline in due process hearings, to eliminate the appeal process of due process, due process and anonymity, prior written notice and public insurance, and to add that the parties shall agree on the mediator selection. Additionally, requests concerning parent consent for evaluations and reevaluations, that the term “reasonable efforts” to obtain parental consent be defined to include home visits, and that “reasonable attempts” to get parent participation be defined. The above requests for amendments and clarifications were not made within the rule because they are regulated under federal law and any changes would be inconsistent with the federal language in the IDEA.

Several requests were made to clarify or amend language that is beyond the meaning or inconsistent with state law and other state rules. Requests to amend other state language included amending the administrative review, scholarship provisions, procedures on transfer of rights at majority when the student lacks capacity to consent, procedural safeguards for nonpublic schools, and language to hold the district of service accountable.

Requests supporting and opposing the removal of “parental consent for change of placement”: As part of the revision process the Agency originally removed the "parental consent for change in placement" subsection. Due to the strong opposition to the proposal the parental consent provision was added back into the rule. Both stakeholder input and public comment showed very little support for the removal. Public comment alone showed that of the 660 public comments for this section alone, 608 comments opposed the removal and only 52 comments were in favor of the proposed removal. This rule has been in place since 2002 and consequently has become an established practice in educational agencies in Ohio.

Several requests were made to add additional regulations and clarifying language to the rule. These requests included adding language that the resolution period timeline can be extended at the request of both parties, a requirement that surrogate parents meet the student, implementation of dispute resolution options and adding “facilitation,” and language to amend an ETR based on an Office for Exceptional Children Memorandum from 2015. The Agency made no changes

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because the above requests expand on the regulation and federal and state guidance is available for procedure and implementation of the rule.

### **3301-51-06 Evaluations**

Stakeholders provided a variety of comments through both stakeholder meetings and through public comment. Feedback includes the following:

Stakeholders and public comment provided comments regarding evaluation timelines. Some commenters wanted evaluation timelines for initial evaluations to be lengthened. Others wanted them shortened. Some commenters wanted timelines for reevaluations and transfers. While the Agency did not add a timeline for reevaluations and did not change the timeline for initial evaluations due to the IDEA requirements, the Agency did add a new timeline for reevaluations when a student transfers from one Ohio district to another.

Some commenters had concerns about the language used surrounding medical consultations. The Agency amended the language to clarify medical consultation was to be encouraged as appropriate.

Many comments were regarding the definition of developmental delay, and commenters wanted to change the age cut off of the disability category from age 6 to age 9. This is defined in Ohio Revised Code 3323.01(A) and could not be changed without a legislative change to the law.

Some comments were received that asked questions, posed comments or requested feedback related to implementing the rule, they did not request changes.

A few comments addressed the requirement that a person who disagrees with an evaluation write a statement of disagreement. The word “shall” was replaced with “may” to reflect that a district cannot force someone to write that statement.

### **3301-51-07 Individualized education program (IEP):**

Stakeholders provided a variety of comments through both stakeholder meetings and through public comment. Feedback includes the following:

There were questions or comments regarding the Alternate Standards: Some stakeholders wanted the Alternate Standards to specify the current Ohio Academic Standards-Extended. Other comments had questions about benchmarks in the individualized education program. The Agency did not make this change as the name of the standards may be changed in the future. The Agency will consider this feedback regarding benchmarks when developing guidance.

There were comments regarding development of an individual education program: Some stakeholders asked for clarification about when an IEP should be amended versus holding an annual review. Other commenters wanted additional language to address social emotional skills and reading improvement plans. The Agency did not make these changes but will be considered when developing guidance.

There questions, comments and feedback related to implementation of the rule. The Agency will consider these when developing guidance.

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There were questions concerning responsibilities of various educational agencies. The Agency removed a list of possible agencies and replacing it with “other educational agencies” so no agency would inadvertently be omitted.

There were requests to add definitions to this rule. The Agency referred to the definitions rule OAC 3301-51-01 where appropriate.

There were questions regarding parent participation and rights. The Agency did not make any changes, but this feedback will be considered when guidance is developed.

**3301-51-08 Parentally placed nonpublic school children:** Stakeholders provided a variety of comments through both stakeholder meetings and through public comment. Feedback includes the following:

There were questions regarding why the date of the child count was changed and others wanted additional clarification of the expenditure formula calculation. The date was changed to comply with reporting requirements. Questions about the expenditure formula will be used in guidance.

Other comments were made that will be addressed in guidance or were referred to the Autism Scholarship and Jon Peterson Scholarship program as they are addressed in those rules. The questions included:

- How a parent can communicate their intent to keep the child enrolled in a nonpublic school?
- What are the responsibilities of the District of Residence and District where the nonpublic is located?
- How do districts implement the rule?

**3301-51-09 Delivery of services:** Stakeholders provided input to the proposed changes in this rule through both stakeholder meetings and through the public comment process. The topics and input include:

There were requests and suggestions made for changes to the service provider workload determination. The Agency will be bringing stakeholders together to address the concerns around both topics during the next five-year revision. Changes to these sections will be informed by the Ohio’s Strategic Plan for Education, Each Child Means Each Child, and support the goals of the plan.

There were questions and comments around transition services, specifically around the definition of ‘coordinating transition’ and ‘providing transition services’. The Agency added clarifying language around these definition prior to public comment.

There were questions, comments, and feedback related to the implementation of this rule. The Agency will consider these when developing guidance for this rule; however, many decisions involved in implementation are determined at the local level.

There were comments regarding grammatical and formatting of the rule. The Agency made adjustments, as necessary, to the rule.

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Requests for more specific information on the continuum of services in Ohio. The Agency will be bringing stakeholders together to address the concerns around both topics during the next five-year revision. Changes to these sections will be informed by the Ohio's Strategic Plan for Education, Each Child Means Each Child, and support the goals of the plan.

Requests were made to add new or clarify existing definitions in the rule. The Agency made adjustments as necessary and will consider these comments when developing guidance.

**3301-51-10 Transportation of children with disabilities:** This specific rule received no comments during the public comment period; however, input was received from stakeholder meetings.

Stakeholders asked questions surrounding the implementation of this rule as well as clarifying questions pertaining to the wording change of safety "harness" to safety "vest".

Stakeholders made requests to define a specific travel time for students and to require that all students with disabilities have an aide on their bus during transportation.

Requests were also made to include information specific to driver training, student behavior requirements, homeless students, open enrolled students, siblings of students, restraint and seclusion and substitute bus drivers.

Much of the stakeholder input is dependent on the specific needs of the student, such as the need for an aide on the bus, travel time, behavior, restraint and seclusion and student status (i.e., homeless, open enrolled and siblings of students), and is therefore addressed at the district level through the student's individualized education program, not through the statewide rule.

There were questions regarding the implementation of the rule, the Agency will be utilizing this information when developing guidance for the rule. The Agency did make changes to the outdated term "safety harness" to "safety vest" based on stakeholder comments.

**3301-51-20 Admissions, transfer, suspension, and expulsion standard for the Ohio state schools for the blind and deaf addresses the admission and discipline standard for the Ohio state school for the blind and the Ohio school for the deaf:** Stakeholders provided a variety of comments through both stakeholder meetings and through public comment. Feedback includes the following:

Multiple requests were made to change the definitions within the rule. Requests were made to change the wording in the definition of 'deaf blindness' from 'concomitant' to 'co-occurring'. The Agency made this change. Requests to change definitions for 'parent' and for the special education eligibility category of 'hearing impaired'. The definitions utilized in this chapter mirror the definitions in the IDEA as well as other Ohio Operating Standards.

There were requests to change words within the rule to change the meaning or for clarification. Requests were made to change the wording around group/residential living at the state schools. Changes were not made to this wording, as the student's need for residential living is based on the individual needs of the student and is determined by the individualized education program

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team. Requests were made to define specific terms, such as ‘as soon as possible’ and ‘special circumstances’, as they relate to the timeframe for notification for removal of students and around emergency removal. The Agency is unable to define these terms as they are specific to each situation and the determined by the needs of the child.

Requests to add a notification to parents during the suspension and expulsion process. The Agency added language to include parents to this process.

Several questions and comments were received that were addressed in other state and federal regulations. There were questions and comments regarding adding more specific information around the manifestation determination portion of the rule. The Agency included the federal citation to manifestation determination found in the IDEA for clarification without duplicating IDEA’s regulation. Requests to include reference to accommodations for parents during the admission and discipline processes. The Agency determined that Parental accommodations are included in the Americans with Disabilities Act and the IDEA.

**3301-51-21 Providing instructional material to children with visual impairments and others with print disabilities that are listed for sale by publishers with the superintendent of public instruction:** Feedback was provided by stakeholders during several meetings held by the Agency. No public comments were received during the public comment period. Stakeholder comments and questions were provided related to the implementation of this rule, which the Agency made minor adjustments to the rule and will also consider when developing guidance for this rule.

Requests were made to include specific names of assistive technology devices within the rule. The Agency did not make this change as device selection is based on the individual needs of the child and is determined by the individualized education program team.

Stakeholders requested grammatical changes which were addressed by the Agency. Requests to clarify and add definitions within the rule, including definitions for ‘tactile graphics’, ‘superintendent of public instruction’, ‘XL file’ and ‘assistive technology’.

The Agency added a definition for ‘instructional materials and technologies’ and made minor adjustments to other definitions included in this rule. Stakeholders made requests to change the title of this rule to make it shorter in length and more specific. Many of the suggested changes to the title put limitation on who could access the provisions of this rule and the Agency did not make changes to the title.

**11. 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?**

The Agency is not aware of any scientific data that might have been used to develop the rules. The rules are also in support and response to federal law. Here is a link to IDEA’s data on the effectiveness of special education regulation: <https://sites.ed.gov/idea/osep-fast-facts-idea-45th-anniversary/>



**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?**

The rule review was done in accordance with the five-year rule review and the Agency presented the stakeholders and The State Board of Education with revisions and maintained most of the original provisions. The Agency presented amended provisions to The State Board of Education and these amendments were in response to federal regulations and stakeholder feedback. The amended provisions were reviewed by the State Board of Education and were adopted by the State Board.

**13. 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 regulations were developed to implement specific state and federal mandates that are intended to comply with the state and federal mandates.

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

A thorough review of Ohio Revised Code and Ohio Administrative Code was done by the Agency to ensure that no other known duplications existed in the state regulations.

**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.**

The Office for Exceptional Children will notify educational agencies, associations, organizations, parents and advocacy organizations by issuing guidance, and providing technical assistance via statewide outreach through conferences and monitoring. Monitoring will occur through the dispute resolution and supports and monitoring sections of the Office for Exceptional Children as well as annual reporting to the Office for Special Education Programming.

**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; and
- b. Identify the nature of all adverse impact (e.g., 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*

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***“representative business.” Please include the source for your information/estimated impact.***

Any potential financial impact of the review and updates of these regulations is mitigated through the entity’s acceptance of federal IDEA dollars. The updates to these regulations were made in order to ensure compliance and expectations with receiving the federal IDEA dollars. Additionally, most of the provisions in the proposed rules are already in effect and the Agency does not anticipate a significant increased financial burden to any impacted entities.

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

Most of the provisions in the proposed rules were maintained from the existing rules and therefore no additional financial impact is expected based on those preexisting provisions. These rules are also established under the regulations of the federal IDEA and ORC 3301.07(J) and ORC Chapter 3323.

The Office of Community Schools invited community school sponsors to provide information regarding the impact of the regulations may have on their agency operations. The Director of Community Schools sent a communication to sponsors requesting feedback on the rules and additionally requested feedback during two Sponsor meetings. The Agency did not receive any feedback from the invited community schools.

**Regulatory Flexibility**

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

No, any exemption would require a waiver from the federal regulations in IDEA and the ORC.

**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?**

The Agency does not have a waiver for fines for paperwork violations. The Agency staff monitors and assists agencies to ensure compliance with the provisions of these regulations.

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

The Office for Exceptional Children will be developing multiple guidance pieces regarding implementation of the rules. These guidance pieces may include modules, revisions to model policy and procedures, webinars, one-pagers, PowerPoint and other guidance documents. Additionally, technical assistance and monitoring is provided to all entities through the Office for Exceptional Children.

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