



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

Business Impact Analysis

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

Rule Contact Name and Contact Information: Brittney Kneisel;
Brittney.kneisel@education.ohio.gov

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

Chapter 3301-32 of the Administrative Code regarding school child programs

Rule Number(s): 3301-32-01 Definitions; 3301-32-03 Staff requirements and ratios; 3301-32-04 Indoor and outdoor health safety; 3301-32-05 Curriculum; 3301-32-06 Child Information; 3301-32-07 Snack and meal requirements; 3301-32-08 Management of communicable disease; 3301-32-09 Discipline; 3301-32-10 Policies and procedures, recordkeeping, and administration; 3301-32-11 Licensure and monitoring

Date of Submission for CSI Review: 9/27/2024

Public Comment Period End Date: 10/4/2024

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 10 rules (FYR? N)

Rescinded/___ rules (FYR?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 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.

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

CSIPublicComments@governor.ohio.gov

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.

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 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.

Proposed amendments to the rules reduce regulatory restrictions in accordance with section 121.951 of the Revised Code and to conform to section 423.140(K)(1) of HB 33 (135th General Assembly) prior to transferring these rules to the Department of Children and Youth.

The Common Sense Initiative (CSI) reviewed the substance of the rules recently and had “no recommendations on this rule package.” *See* Memorandum dated December 23, 2020 Re: CSI Review – Chapter 3301-32 of the Administrative Code Regarding School Child Programs, a copy of which is attached to this submission.

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.**

Section 3301.53 of the Revised Code specifically authorizes the Ohio Department of Education and Workforce, in consultation with the Ohio Department of Job and Family Services, to

formulate minimum standards to be applied to preschool programs, including those operated by eligible nonpublic and community schools. Section 3301.53 also requires that the rules adopted by the Department of Education and Workforce meet or exceed the requirements of Chapter 5104, which are the statutes and rules adopted for child day-care by the Ohio Department of Job and Family Services. Section 423.140(K)(1) of HB 33 (135th General Assembly) requires the Department to reduce regulatory restrictions in these rules related to children's services programs prior to transferring them to the Department of Children and Youth.

- 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.**

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

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

The rules that set out who must obtain a license, what qualification and training program personnel need to have, ratios and maximum group sizes by age, and what kind of environment must be provided, are established by each state pursuant to its law and, therefore, differ among states.

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The rules protect the health and safety of children served in before and after school program settings. School age children look to their parents, teachers, and care givers to meet their needs for safe environments in which to grow, develop, and thrive. Basic health and safety requirements provide the foundation for quality programs that in turn support the children they serve.

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

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

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

- 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?**

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.

The Department engaged stakeholders, the Department of Children and Youth and the Ohio Department of Job and Family Services throughout the revision process. The current rules were posted for public comment from July 17 through August 4, 2024. A public notice for these rules was sent directly to all subscribers of SACC Licensing Superintendent Contacts, SST Early Childhood Contacts, and School Age Child Care Licensing. In addition, the rules were also posted in the EdConnection.

The revisions were posted for public comment August 23 through September 22, 2024.

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

No public comments were received during the initial comment period or during the second comment period.

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 American Public Health Association (APHA) and the American Academy of Pediatrics (AAP) jointly published *Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Out-of-Home Child Care Programs*. The publication was the product of a five-year national project funded by the U.S. Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Bureau (MCHB). The comprehensive set of health and safety standards contained within the report was a response to a multi-year effort by advocates to increase the quality child care. In the years that followed, experts in the field have repeatedly reaffirmed the need for these standards. A second and third edition of *Caring for Our Children* have been published that address new knowledge generated by increasing research into health and safety in early care and education programs. The increased use of the standards both in practical onsite applications and in research documents the value of the standards and validates the importance of keeping the standards current. *Caring for Our Children* has served as yardstick for measuring progress in the field, charts the future of care in education settings, and provides for a technical manual on best-practices.

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

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Alternative regulations may include performance-based regulations, which define the required outcome, but do not dictate the process the regulated stakeholders must use to comply.

Alternatives were not considered as the rules are required by section 3301.53 of the Revised Code and section 423.140(K)(1) of HB 33 (135th General Assembly).

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

Measures were not taken during this revision since the changes made to these rules were only removing regulatory restrictions, pursuant to section 121.951 of the Revised Code, and changing entity name and relevant code reference.

14. 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 virtual trainings and posted checklists, guides, and forms that help programs comply with the regulations. These include but are not limited to: preparation for an on-site visit; completing forms related to staff and child requirements; selecting a curriculum; keeping children safe while learning and playing; and professional development training information. Additionally, training is provided for Licensing Specialists (field personnel) who conduct on-site visits to ensure consistency in reporting compliance. Licensing supervisors are made available to assist field personnel before, during and after on-site visits.

Adverse Impact to Business

15. Provide a summary of the estimated cost of compliance with the rule(s). Specifically, please do the following:

- a. Identify the scope of the impacted business community, and
- b. Quantify and identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance, etc.).

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 adverse impacts of the proposed rules may affect eligible chartered non-public schools. Potential adverse impacts of the rules include time necessary to develop policies and procedures (24 hours of initial time, and four hours of subsequent staff time per year for updates).

Additional adverse impacts include costs to train staff, appropriate inspections for building approval for programs not located in schools, including documentation of inspection costing up to \$300; meeting facility requirements including the availability of a working telephone, indoor

space of 35 square feet per child, and outdoor space of 60 square feet per child with appropriate safety measures.

Adverse impacts associated with program and curriculum requirements include costs to purchase or develop curriculum ranging from \$60 to \$200, costs of classroom equipment, and costs of outdoor equipment. Furthermore, facilities must purchase health and safety supplies estimated at \$50 annually per classroom for cleaning supplies, up to \$75 annually for first aid supplies, and medication storage. Facilities must also meet nutrition requirements and face costs to provide snacks and meals to students, spend time developing policies and procedures, keeping records, and administering programs. Meeting licensure requirements requires up to an hour to complete an application and to submit other required documents. Food licenses may cost \$300 to \$600.

There is no additional cost of compliance with the rules given that the current proposed amendments to reduce regulatory restrictions in accordance with Ohio Revised Code section 121.951, and to conform to section 423.140(K)(1) of HB 33 (135th General Assembly) prior to transferring the rules to the Department of Children and Youth.

16. Are there any proposed changes to the rules that will reduce a regulatory burden imposed on the business community? Please identify. (*Reductions in regulatory burden may include streamlining reporting processes, simplifying rules to improve readability, eliminating requirements, reducing compliance time or fees, or other related factors*).

Yes. The proposed changes to the rules reduce regulatory restrictions.

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

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 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? Please explain.

Yes. Section 3302.07 of the Revised Code authorizes the Director of the Department to waive specific statutory provisions and rules to implement a proposed innovative education pilot program (IPP).

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

While some rules can be waived, pursuant to section 3302.07 of the Revised Code, statutes and rules related to the employment of staff; the education of children with disabilities; and the health

and safety of students cannot be waived. Any waiver application for preschool rules must be approved by the Department.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

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

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

Information is available on the Department's website: [Early Learning | Ohio Department of Education and Workforce](#). This site is the home for information related to children in school age child care programs and provides important updates for programs regarding child development, curriculum, program resources and professional development opportunities.

Technical assistance can be accessed by phone or email from the Office of Early Learning and School Readiness, which has transitioned to the Ohio Department of Children and Youth.