



Common Sense Initiative

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Business Impact Analysis

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

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

Ohio's Procedural Safeguards for the Education of Students with Special Needs

Rule Number(s): 3301-51-05 Procedural safeguards

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/ 1 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Rescinded/___ rules (FYR?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.

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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.

3301-51-05 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. The proposed revisions to the rule were intended to update the language and align the rule with federal regulations, specifically the Individuals with Disabilities Education Act (IDEA).

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.**

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

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

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.

Yes. IDEA regulations 34 CFR 300.154, 300.300 and 300.500 to 300.537.

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 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, 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 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 educational agency:

- 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 & Workforce 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)

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 Department has the authority to develop mediation procedures under the Ohio Revised Code (ORC) 3323.05(F).

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

Rationale: Authority is given to the Department 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 for an impartial hearing officer and state level review officers.

Rationale: The 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 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.

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)?

O.A.C. 3301-51-05 ensures students with disabilities and their parents are provided procedural safeguards to ensure the provisions of a free appropriate public education (FAPE). The rule also ensures that provisions of the federal regulations in IDEA and R.C. 3301.07(J) are implemented and monitored.

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

The Department 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 Department 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 Department. The Department will then investigate compliance.

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.

The Department engaged stakeholders 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 numerous stakeholders including, but not limited to, all subscribers of Special Education Directors and SST Directors. The Department conducted numerous stakeholder meetings. In addition, the rules were also posted in the EdConnection.

The revisions were posted for public comment from 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. Two (2) public comments were received during the period that the revisions were posted for public comments. One (1) of those comments resulted in the original language being kept instead of the proposed revision.

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 Department 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.

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.

The rule review was done in order to ensure compliance with the IDEA. The Department presented the stakeholders with revisions and maintained the majority of the original provisions. The Department presented amended provisions and these amendments were in response to federal regulations and stakeholder feedback.

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

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

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.

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

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 rule may affect eligible chartered non-public schools. 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 rule are already in effect and the Department does not anticipate a significant increased financial burden to any impacted entities.

The financial impact of the rule, which requires a variety of procedural safeguards to be implemented, is on public school districts, public community schools, and other public agencies that provide education to students with disabilities. If an educational agency does not follow the requirements of the rule, it may be found noncompliant after review by the Department. If so, and if proper procedures are not remedied by that educational agency, then it may impact their funding pursuant to sanctions provisions of the federal IDEA. There are additional expenses for public educational agencies contained in this rule because the sanctions provisions of the federal IDEA do not apply to the nonpublic school funding. The rule may still adversely impact nonpublic schools because it requires safeguards to be put into place by all educational agencies.

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*).

No.

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.

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 Department does not have a waiver for fines for paperwork violations. The Department 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.