



## Common Sense Initiative

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

**Carrie Kuruc**, Director

### MEMORANDUM

**TO:** Wendy Grove, Ohio Department of Education

**FROM:** Emily Groseclose, Senior Policy and Business Advocate

**DATE:** February 3, 2020

**RE:** **CSI Review – Preschool Children Eligible for Special Education (OAC 3301-51-11)**

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On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

#### Analysis

This rule package contains one amended rule proposed by the Ohio Department of Education (Department) as part of the statutorily required five-year review process. The rule package was submitted to the CSI Office on June 11, 2019, and the public comment period was held open through June 18, 2019. Seventeen comments were received during this time, and the Department provided its response on December 6, 2019. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on June 11, 2019.

OAC 3301-51-11 implements Part B Section 619 of the Individuals with Disabilities Education Act (IDEA), providing requirements related to preschool children eligible for special education and includes the responsibilities of local education agencies, education service centers, and county boards of developmental disabilities. The proposed amendments are intended to clarify definitions, and to update the rule to align with the preschool special education ratio established in statute as well as the federally required continuum of placement options from least restrictive to most restrictive environments. The amendments also remove language duplicative of the IDEA Title 34, Part 300, ORC Chapter 3323, and OAC Chapters 3301-51 and 3301-37.

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

[CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)

The Department began engaging with stakeholders on the rule changes in February 2017 by distributing a survey to 1,355 interested parties related to the ratio requirements that were pending in legislation and hosting four focus groups. The Department again hosted stakeholder focus groups in the Fall of 2017 after legislation was passed to engage on needed clarifications and changes to the rule. The first rule revision was drafted with the ideas shared during those meetings.

The revised rule was posted on the Department's website from November 2, 2017-January 19, 2018, and the Department held a conference on December 5, 2017 with stakeholders. Ninety-six comments were received during that period, and all individuals who commented were invited to one of five focus groups held in February 2018. The Department revised the rule based on the public comments, stakeholder meetings, and focus groups, and the revised rule was posted for public comment again from April 2-May 4, 2018, during which sixty comments were received.

Another stakeholder meeting was held on May 29, 2018. Additionally, the Department hosted a conference call with leaders from the US Department of Education Office for Special Education Programs and stakeholders on July 6, 2018, followed by an in-person discussion with Department leadership and stakeholders on July 24, 2018 and August 23, 2018. In November 2018, drafted revisions were sent to Ohio Disability Rights, the Ohio Coalition for the Education of Children with Disabilities, Buckeye Association of School Administrators, Ohio Association of Educational Service Centers, and the Ohio School Boards Association. The revised rule was again posted for public comment from February 6, 2019-February 27, 2019. The Integrated Student Supports Committee of the State Board of Education also recommended minor changes to the rule.

Seventeen comments were received during the CSI comment period. The comments predominantly expressed concerns regarding the teacher to student ratio, and the requirement for districts to provide to parents a list of available preschool education service options in the community that isn't restricted to district boundaries. Another commenter shared concerns that time requirements for Occupational Therapists, Physical Therapists, and Speech Therapists who provide related services need clarified, as well as general concerns that they must follow rules of their licensure board, the Department, and the Ohio Department of Medicaid.

In response, the Department noted that the teacher to student ratio is established in ORC 3323.022, and that the list required providing available preschool options is only for informational purposes and does not require staff to travel outside of the district. Additionally, the Department stated that it intends to provide guidance on the concerns and requests for clarifications regarding licensed professionals providing related services.

The Department stated that the rule impacts local educational agencies, educational service centers, and county boards of developmental disabilities, and that the amendments do not add any additional operation costs. The Department noted that educational service centers and county boards of developmental disabilities are paid by the district of residence where the children they are serving live. The Department asserted that there are minimal expected adverse impacts to business.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that the Ohio Department of Education should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.