



## Common Sense Initiative

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

**Sean McCullough**, Director

### MEMORANDUM

**TO:** Jo Hannah Ward, Ohio Department of Education

**FROM:** Joseph Baker, Business Advocate

**DATE:** September 14, 2022

**RE:** **CSI Review – Ohio’s Operating Standards for the Education of Children with Disabilities (OAC 3301-51-01, 3301-51-02, 3301-51-03, 3301-51-04, 3301-51-05, 3301-51-06, 3301-51-07, 3301-51-08, 3301-51-09, 3301-51-10, 3301-51-20, and 3301-51-21)**

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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 Department as provided for in ORC 107.54.

### Analysis

This rule package consists of twelve amended rules proposed by the Ohio Department of Education (Department) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on October 26, 2021, and the public comment period was held open through November 3, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on October 26, 2021.

The rules in this package establish standards for ensuring that children with disabilities between the ages of 3-21 have access to free and appropriate public education.

OAC 3301-51-01 sets forth definitions related to the education of students with disabilities and has been amended to remove outdated citations, streamline language, better align with federal law, to remove outdated terminology, to update certain definitions, and to remove references to preschool children (who are addressed elsewhere in rule). OAC 3301-51-02 requires educational agencies to

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implement policies and procedures that ensure a free and appropriate public education is available to all children with disabilities. The rule is amended to clarify that the responsibility to provide the education belongs to the child's educational agency rather than simply the school district of residence and to adopt other technical changes. OAC 3301-51-03 requires educational agencies to adopt policies and procedures to identify, locate, and evaluate children in the district who have special education needs. The rule is amended to clarify definitions and to include additional language regarding a school district's responsibility to report racial and ethnic data to the Department for purposes of determining whether disproportionality exists concerning the identification of (and assistance provided to) children with disabilities.

OAC 3301-51-04 establishes confidentiality protections for educational records and permits parents the opportunity to examine such records in accordance with federal law. The rule is amended to adopt clarifying changes, streamline language, and to include a new section exclusively permitting educational agencies to transmit records to the extent permitted by the Family Educational Rights and Privacy Act. OAC 3301-51-05 establishes procedural safeguards to ensure that children with disabilities, parents, and public agencies can resolve disputes regarding the identification, evaluation, educational placement, or provision of a free and appropriate public education. The rule is amended to better align with federal regulations.

OAC 3301-51-06 specifies requirements for educational agencies and school districts to evaluate children with disabilities, to provide interventions, and to collect and use data collected from interventions to determine eligibility for special education services, among others. The rule is amended for clarity and conformity to federal regulations and to specify additional guidance for educational agencies receiving children from other locations in-state. OAC 3301-51-07 requires educational agencies to develop and implement an individualized education program for each child with a disability. The rule is amended to remove language that is duplicative of federal regulations and to standardize terminology.

OAC 3301-51-08 requires school districts to provide equitable services for children who attend a chartered or non-chartered nonpublic school within the district and to identify and evaluate children with disabilities located in the school district. The rule is amended to streamline and clarify language. OAC 3301-51-09 requires educational agencies, to the extent possible, to educate children with disabilities with children who are not disabled. The rule is amended to clarify language and terminology, remove outdated references and terms, and adopt other technical changes. OAC 3301-51-10 outlines certain definitions, provider responsibilities, and eligibility requirements relating to the transportation of children with disabilities to and from the educational setting. The rule is amended to remove duplicative and outdated terms and to streamline language. OAC 3301-51-20 sets forth definitions, standards, and limitations regarding the admission, evaluation, placement,

suspension, transfer, or expulsion of children attending the Ohio State School for the Deaf and Ohio State School for the Blind. The rule is amended to update citations, streamline language, and include a definition section. Finally, OAC 3301-51-21 establishes definitions and requirements for textbooks designed to aid individuals who are visually impaired. Such requirements include that a publisher deposit a file set into the national instructional materials access center for the textbook to be listed on the approved textbook publishers list, among others. The rule is amended to streamline and clarify language.

During early stakeholder outreach, the Department conducted a series of meetings beginning in May 2019 and concluding in September of 2021 with a variety of interested parties. Participating parties include the Ohio Coalition for the Education of Children with Disabilities, Disability Rights Ohio, the Ohio Association for Autism and Low Incidence, Lutheran Schools of Ohio, the Association of Christian Schools International, the Ohio Association of Elementary School Administrators, Ohio School Boards Association, and others. Based on feedback from stakeholders, the Department adopted numerous changes to the rules prior to filing with the CSI Office. Forty-two comments were received from stakeholders during the CSI public comment period. Thirty-one comments were received from stakeholders recommending lowering caseloads for speech-language pathologists or audiologists, including the Ohio Speech and Hearing Governmental Affairs Coalition. The Department responded to the comment stating that it will convene a workgroup designed to allow all stakeholders the opportunity to review caseload determinations and to further evaluate the concerns shared by these stakeholders. The Ohio Occupational Therapy Association, Ohio Physical Therapy Association, and Occupational Therapy, Physical Therapy, and Athletic Trainers' Board recommended that the Department remove additional practice limitations in the rules for occupational therapy and physical therapy assistants. The Department responded that the limitations in the rules are necessary to comply with federal requirements surrounding the provision of services to children with disabilities. School Choice Ohio also commented on the rules sharing various programmatic and definitional concerns regarding equal treatment for students in nonpublic schools, transportation services for children with disabilities, and how the rules apply to children in nonpublic schools or homeschool settings. The Department responded to the comment but did not adopt any changes to the rules. Finally, the Department also received several other comments recommending various changes or clarifications regarding services and processes from groups, to which it provided a written response but did not make any changes.

The business community impacted by the rules, as identified by the Department, includes community schools and individual contractors who provide educational services. The adverse impacts to the schools involve costs and time associated with ensuring that third party contractors are appropriately licensed. Additionally, individuals who are contracted to serve as teachers, intervention specialists, related service providers, occupational or physical therapists or assistants,

speech language pathologists, interpreters, or school psychologists are also required to meet licensure requirements and pay related fees under the rules. Occupational or physical therapists, occupational therapist assistants or physical therapist assistants, school audiologists, school nurses, school social workers, school speech language pathologists must maintain a pupil service license at a cost of \$150, which is valid for five years. Educators seeking to serve as intervention specialists are required to maintain licensure at a cost of \$40 annually. Finally, Educational paraprofessionals, interpreters, occupational therapy assistants, and physical therapy assistants may also pursue associate licensure at a cost of \$200 for a five-year period. The Department notes that the potential financial impacts of these rules are mitigated by the school receiving federal funding through the Individuals with Disabilities Education Act. The Department states that the rules are necessary to ensure that students with disabilities receive a free and appropriate public education and that all provisions in federal and state law are implemented and monitored.

### **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.