



# 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

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

Standards for Kindergarten through twelfth grade.

Rule Number(s): 3301-35-04

Date of Submission for CSI Review: 9/21/2023

Public Comment Period End Date: 9/28/2023

**Rule Type/Number of Rules:**

New/\_\_\_ rules

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

Amended/ 1 rule (FYR? 4/19/2021\_\_\_)

Rescinded/\_\_\_ rules (FYR?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.*

OAC 3301-35-04 addresses the policies and procedures that should be adopted by school districts and chartered nonpublic schools to ensure student and stakeholder needs are addressed. A primary focus of the rule is on using data provided by the state, as well as assessment data gathered by the district to inform instruction at the student level. In addition, a heavy focus is put on input by stakeholders into the decisions around instructional program. As stated in the rule, school districts and chartered nonpublic schools must offer courses in World Language, Technology, Family and Consumer Sciences and Business education. The rule also states that all courses offered should have courses of study developed with specific guidelines as to what to include. In addition, there is language around how credits are awarded with an expectation of this information being included in students' cumulative record. Revisions to the rule focused on ensuring language that is consistent with provisions in the Revised Code, including the use of the term "English learners" when necessary, as well as updating assessment information to include state performance measures and local data.

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.**

Authorizing: ORC: 3301.07

Amplifying: ORC 3301.07, 1347.99, 3301.0711, 3313.60, 3313.6013, 3313.602, 3313.603, 3313.608, 3313.609, 3313.61, 3313.611, 3313.612, 3313.613, 3313.614, 3313.615, 3313.641, 3313.90, 3319.01

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.*  
No.
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.** N/A
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)?** R.C. 3301.07 requires the establishment of minimum standards for the operation of primary and secondary schools.
7. **How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** Success will be measured by the quantity and quality of courses to students.
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.  
*If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.*

### **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.*

In the initial review in 2019-2020, Department staff met with the following stakeholder groups August 6-8, 2019, for all of the administrative rules that contained minimum standards for primary and secondary schools:

Ohio Association for Supervision and Curriculum Development, Buckeye Association of School Administrators, Ohio Business Round Table, chartered nonpublic schools, Committee of Practitioners, Ohio Council of Community Schools, Ohio Department of Higher Education, Ohio Department of Public Safety, Educational Service Centers, Future Ready, High School Redesign Task Force, Infohio, Instructional Technology Services of Central Ohio, Ohio Leadership Advisory Council, Latino Education Commission, Ohio Association of Administrators of State and Federal Education Programs, Ohio Federation of Teachers, Ohio Afterschool Network, Ohio Alliance for Charter School Authorizers, Ohio alliance for Public Charter Schools, Ohio Association for Employment in Education, Ohio Association of Career and Technical Education, Ohio Association of Career Technical Superintendents, Ohio Association of County

Behavioral Health Authorities, Ohio Association of Elementary School Administrators, Ohio Association of Private Colleges for Teacher Education, Ohio Association of School Business Officials, Ohio Association of School Personnel Administrators, Ohio Association of Secondary School Administrators, Ohio Blended Learning Network, Ohio Compact and Comprehensive Career Technical Schools, Ohio Council of Behavioral Health and Family Service Providers, Ohio Department of Mental Health and Addiction Services, Ohio Education Association, Ohio English Learner Advisory Committee, Ohio Middle Level Association, Ohio Parent Teacher Association, Ohio School Boards Association, Ohio School Counselors Association, Ohio School Psychologists Association, Ohio STEM Learning Network, Regional Data Lead Network, Community School sponsors, State University Education Deans, Superintendent’s Advisory Committee for High School Graduation Requirements, Association of Christian Schools International, Catholic Conference of Ohio, Christian Home Educators of Ohio, Columbus Diocese, Directors of Curriculum, Marburn Academy, Nonchartered, nontax school leaders, Ohio Association of Public School Employees, Ohio Association of Public Service Administrators, Ohio Association of School Nurses, Ohio Center for Autism and Low Incidence, Ohio Coalition of the Education of Children with Disabilities, Ohio Council for Exceptional Children, Ohio Council of Teachers of English Language Arts, Ohio Education Library Media Association, Ohio Occupational Therapy Association, Ohio Physical Therapy Association, Ohio School Speech and Educational Audiology Coalition, Rosemont Center, St. Vincent Family Centers, and the State Advisory Panel for Exceptional Children.

In the second review in 2023, Department staff engaged with the Nonpublic Superintendents Advisory Committee and Ohio Excels prior to public comment. The Nonpublic Superintendents Advisory Committee includes representatives from the Ohio Conference Seventh-day Adventist, Ohio Association of Independent Schools, Ohio Jewish Communities, Agudath Israel – Midwest Region, Catholic Conference of Ohio, Catholic Conference of Ohio, Lutheran Schools of Ohio, Association of Christian Schools International, NonCharter, Nontax Schools, and Association of Christian Schools International. Stakeholder engagement occurred from March 20, 2023, to April 4, 2023.

**10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?** In the initial review in 2019-2020, Stakeholders provided feedback over a three-day period from August 6 through 8, 2019, in face-to-face meetings. The draft regulation was also published on the department’s website from August 9, 2019, through September 9, 2019, with a request for public comment.

Before the State Board of Education adopted a proposed rule in 2020, one stakeholder advocated for the removal of the requirement for schools to offer certain courses (see Paragraph (B)(1) of the current rule). In 2020, the Board removed that requirement in its

draft rule, which ultimately led to the draft rule's invalidation by the General Assembly in 2021.

In 2023, when the State Board of Education was able to continue rulemaking on the rule, the Board adopted a draft rule that is largely consistent with the provisions of the Board's previous 2022 draft rule with one major exception: the 2023 draft rule retains the requirement that was the subject of the previous draft rule's invalidation in 2022.

**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 being used.

**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.***

None.

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

A thorough review of the state and federal law was done by the Agency's legal counsel to ensure that there were no existing duplications.

**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.** For chartered nonpublic schools, the Department of Education follows the rules in Chapter 3301-39 of the Ohio Administrative Code, which address the procedures for approval of a chartered nonpublic school and the monitoring and oversight of a chartered nonpublic school.

### **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.* Scope: chartered nonpublic schools. Nature: In response to a survey sent by the Department, chartered nonpublic schools stated the rules would create a burden in terms of supplies, resources, and personnel. Nevertheless, most of the provisions in the proposed rules are already in effect.

- 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*). N/A**
- 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 rule are already in effect. Thus, much of the financial impact is based on existing provisions. Moreover, R.C. 3301.07(D)(2) requires the establishment of minimum standards for schools, and this rule fulfills that requirement. Based on the revisions made in the proposed rules, the Department does not anticipate a significant increased financial burden, if any, to the Impacted entities.

### **Regulatory Flexibility**

- 18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.** N/A
- 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?** N/A
- 20. What resources are available to assist small businesses with compliance of the regulation?** The Department's Office of Nonpublic Educational Options offers guidance and technical assistance to chartered nonpublic schools. The Department also maintains resources on its website to assist schools.