



## MEMORANDUM

**TO:** Christopher Castle, Administrative Rule Coordinator, Ohio Department of Education  
**FROM:** Sydney King, Regulatory Policy Advocate  
**DATE:** December 9, 2014  
**RE:** **CSI Review – Operating Standards for Ohio’s Schools (OAC 3301-35-01 through 3301-35-10)**

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On behalf of Lt. Governor Mary Taylor, 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 consists of 10 amended<sup>1</sup> rules being submitted by the Ohio Department of Education (ODE) related to operating standards for Ohio’s schools. The original rule package included a review for only proposed rules 3301-35-08, 3301-35-09, and 3301-35-10. However, CSI requested ODE revise the BIA to include rules 3301-35-01 through 3301-35-07 because language in Rule 3301-35-09 created a requirement for chartered, nonpublic schools (“private schools”) to comply with these rules. In addition, the definitions of “school,” “school district,” and “board of education” – all of which are defined in rule 3301-35-01 and used throughout the remainder of the chapter – include private schools. Private schools are considered businesses for the purpose of CSI review. ODE agreed that rules 3301-35-01 through 3301-35-07 created additional adverse impacts for private industry and submitted a revised BIA on December 8, 2014. The rule package was initially submitted November 14, 2014 and the public comment period closed on November 25, 2014.

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<sup>1</sup> Rules 3301-35-01 through 3301-35-7 are being amended by more than 50 percent; therefore, the Legislative Service Commission requires that the existing rules be rescinded and replaced by new rules that have the same rule numbers.

Rule 3301-35-08 provides requirements for non-chartered, non-tax supported schools. Rule 3301-35-09 regulates private schools requiring them to comply with rules 3301-35-01 to 3301-35-07. The majority of the operational standards, regulating both private and public schools, are in rules 3301-35-01 through 3301-35-07 and do not distinguish between private and public schools. Therefore, Rule 3301-35-09 contains specific exceptions to the operational standards requirements for private schools. The operating standards in the chapter require schools to create strategic plans, adopt policies and procedures for blended learning environments, establish policies for academic performance and parental involvement, create stakeholder groups to assess and review school policies and programs, and create assessment systems and policies to review student progress and student disability participation. The rules also establish guidelines for curriculum, awarding credit to students, hiring and evaluating staff, and improving operational and educational performance.

During the CSI public comment period but before ODE agreed to include the additional seven operating-standard rules for review, the Ohio Association of Independent Schools (OAIS) submitted a comment expressing several concerns with the original rule package. The CSI Office communicated to OAIS that rules 3301-35-01 through 3301-35-07 will also be reviewed. OAIS submitted additional comments for this set of rules to CSI on December 5, 2014.

The OAIS comments expressed a general concern with the rules' failure to differentiate between public and private schools within the body of the operating standards. OAIS also expressed several specific concerns, including several examples where it believes treating the private and public schools the same creates undue burdens on the private schools. In follow-up discussions, ODE staff clarified, justified, or agreed to change certain requirements, such as the requirement to offer "advanced standing programs," such as dual enrollment, and the requirement that "every school shall be provided the services of a principal" which ODE stated does not require a principal's license for private schools. OAIS requested an appeal be allowed for Rule 3301-35-07 waivers. ODE stated that the statute creating the waiver did not require ODE to create an appeals process for the waivers, and it expressed that because a waiver is intended to provide flexibility from a generally-applied regulation, an appeal process is not appropriate. ODE also assured the CSI office it would work with a school to address problems in a denied waiver application. The CSI office found that other State agencies treat waivers similarly and do not allow for formal appeals processes. In another comment, OAIS was able to identify a recent legislative change to exempt private schools from the credit flexibility requirements found in Ohio Revised Code 3313.603(J). As such, ODE agreed to amend Rule 3301-35-04 to be consistent with the statutory exemption.

However, other provisions of the rules seem to impose regulations on the business operations, rather than the educational or child welfare operations, of public schools. OAIS commented on Rule 3301-35-06 which requires private schools to engage with key stakeholders every three years reviewing the allocation of educational resources and also in its regular budget process. Stakeholders are defined in the rule to include parents, business advisory councils, family and civic

engagement teams, school-parent or school-business partnerships, and other schools, social services, and organizations that impact educational programs for students. OAIS expressed concerns with a private school being required to engage with specific stakeholders about the school's budget and allocation of resources stating that it was "intrusive" and creates additional costs for schools. The regulation for public schools is necessary because the listed stakeholder groups have a vested interest in the quality of public schools; this includes the operations of public schools. However, the CSI Office agrees that a public agency regulating how a private school should discuss the allocation of education resources and budget development is overly burdensome. Therefore, the CSI Office recommended amending Rule 3301-35-09 to create an exception for the stakeholder requirement. ODE agreed to the recommendation and will amend Rule 3301-35-09 to include this exception.

OAIS also commented on Rule 3301-35-07 which requires a private school to host a public meeting to discuss ODE's site visit report. ODE only performs site visits when complaints about the school are received. After the site visit, ODE issues a report and the school is required to schedule a public meeting within ninety days of the report's receipt to discuss the report's recommendations. OAIS expressed concerns with a private school being required to host a public meeting. In follow-up discussions, ODE staff expressed its opinion that the Open Meeting Laws – which would impose specific costs through notice requirements, recordkeeping, etc. – do not apply to private institutions, but ODE did assert that the provision is justified to provide parents, staff, and the general public knowledge about the visit and the report. However, although ODE made a compelling case about the right of parents and staff to participate in the school's response to the site visit report, no similar rationale for the general public justified the broader public meeting requirement for a private school. As such, the CSI Office recommended amending Rule 3301-35-09 to create an exception requiring only a meeting with parents and other direct stakeholders for private schools. ODE agreed to the recommendation and will amend Rule 3301-35-09 to include this exception.

As mentioned above, the majority of the comments received from OAIS addressed the language of the rules and how it generally applies to both private and public schools. ODE communicated to CSI that it was necessary to regulate private schools the same as public schools in order to accomplish the public purpose of ensuring students are provided a general education of high quality. However, there are several examples where treating both private and public schools the same creates confusion due to basic operational differences. In some cases, ODE indicated that specific requirements would not apply to private schools, and therefore the schools would not need to comply with those provisions. However, with the exception of those requirements specifically exempted in Rule 3301-35-09, it is not always immediately evident which requirements would and would not apply to private schools. Therefore, the CSI Office recommends ODE continue to engage stakeholders after the rule filing, including OAIS, in addressing the issue of how ODE regulates private and public schools and ensuring the rules are transparent to the business community.

### **Recommendations**

For the reasons discussed above, the CSI Office recommends ODE create exceptions for Rules 3301-35-06 and 3301-35-07 and demonstrate a continued commitment to engage stakeholders on addressing rule language concerns. ODE has already agreed to revise the proposed rules to include the recommended exceptions.

### **Conclusion**

Based on the above comments, the CSI Office concludes that after the Ohio Department of Education makes the recommended rule changes, it should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review and continue to engage stakeholders on the appropriate regulation of private schools.