



## Common Sense Initiative

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

**Carrie Kuruc**, Director

### MEMORANDUM

**TO:** Marva Jones, Ohio Department of Education

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

**DATE:** February 10, 2021

**RE:** **CSI Review – Operating Standards for Ohio’s Schools (OAC 3301-35-01, 3301-35-02, 3301-35-03, 3301-35-04, 3301-35-05, 3301-35-06, 3301-35-07, 3301-35-08, 3301-35-09, and 3301-35-10)**

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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This rule package contains one rescinded and nine amended rules proposed by the Ohio Department of Education (Department) as part of the statutorily required five-year review process. The rule package was submitted to CSI on September 25, 2020, and the public comment period was held open through October 5, 2020. More than 120 comments were received during that time, and the Department provided its response on November 17, 2020. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on September 25, 2020.

These rules establish minimum operating standards for Ohio’s public schools, as well as chartered and non-chartered nonpublic schools. The rules require schools to develop policies governing their operations and educational programs (including blended learning policies and procedures), to communicate academic performance, attendance, and conduct expectations, to provide professional development, to design educational programs to meet the needs of students, and to use data to improve educational performance. The rules also establish the process for site visits to

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

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

chartered nonpublic schools, specify minimum operating standards for non-chartered non-tax supported schools and chartered nonpublic schools, and address procedures for beginning a new chartered nonpublic school or changing location or ownership for an existing chartered nonpublic school.

Proposed amendments are intended to align the rules' content with statute and include eliminating a requirement that schools provide for the study of foreign language, technology, family and consumer science, and business education. The amendments also require chartered nonpublic schools to develop strategic plans governing operations and stakeholder engagement, and require chartered nonpublic schools to communicate academic performance, attendance, and conduct expectations. The amendments further eliminate a requirement for educational service personnel assigned to elementary fine arts, music, and physical education to hold a special teaching certificate or multi-age license in the subject to which they are assigned and remove permissive language allowing schools to contract with private providers for academic remediation outside of regular school hours.

OAC 3301-35-10 is proposed for rescission with its provisions being amended into OAC 3301-35-09. Updates include requiring a chartered nonpublic school to report a change in grade levels or closing of a location to the Department and potentially to submit a corrective action plan for failing to notify the Department of changes or to comply with the rule.

The Department began engaging with stakeholders on the rule changes through in-person meetings in August 2019, and the proposed rules were posted on its website during that time. The Department stated on the BIA that significant changes came at the request of stakeholders and included the implementation of a permissive rather than mandatory strategic plan, removal of references to content areas that are not listed in the ORC (foreign language, technology, family and consumer science, and business education), and removing changes to OAC 3301-35-08 setting minimum standards for non-chartered, non-tax supported schools.

There were more than 120 comments received during the CSI comment period. Many of the concerns addressed the elimination of a requirement for elementary fine arts, music, and physical education educational service personnel to hold a special teaching certificate or multi-age license in the subject to which they are assigned. Commenters stated that they believe the change will diminish the importance of the subject areas and will allow unqualified teachers to instruct students. One comment was supportive of the proposed change, stating that it will open the door for experienced artists and musicians who may not hold a specific teaching license to share their experience with students and potentially help fill a shortage of teachers in that space.

In response, the Department stated that licensure requirements are established by the legislature and that statute requires teachers in core subject areas, including fine arts, to be properly certified or licensed. General elementary school licenses allow teachers to provide instruction in any subject area, and statute requires that physical education teachers must hold a license to teach physical education. The Department asserted that the proposed amendment removes a requirement that goes beyond what ORC 3319.074 requires, and it believes it is important that the rule takes into consideration schools that might be facing shortages of specialized teachers.

The business community impacted by the rules include chartered nonpublic schools and non-chartered nonpublic schools. Three chartered nonpublic schools responded to a survey from the Department and stated that the rules would create a financial adverse impact due to the supplies, resources, and personnel the rules require. The financial burden estimated by the schools ranges from \$5,000 to \$150,000.

The Department asserted that many of the provisions in the rules are already in effect, and the changes would not significantly increase the financial impact on schools. Additionally, the Department stated that the rules fulfill the statutory requirement for it to establish minimum standards for schools.

### **Recommendations**

The strength of Ohio's economy and business community relies on a skilled workforce that is fueled by an education system that offers the proper training to prepare students for in-demand jobs. Requirements that schools offer courses in the areas of foreign language (which can include computer coding), technology, and business education ensure equitable access to courses that prepare Ohio's students to compete in today's tech-infused workforce. Lt. Governor Husted, overseeing CSI and the Governor's Office of Workforce Transformation, has worked across the administration and with the legislature to implement programs and policies that ensure Ohio's workforce is properly skilled. Eliminating a requirement that schools provide for the study of foreign language, technology, family and consumer science, and business education—as the Department proposes to do in OAC 3301-35-04 (B)(1)—works directly against those goals. Removing the requirement also opens the door to unequal access to technology training since the encouragement of a mandate guarantees the training across all parts of the state.

The proposed rule change will have a direct and adverse impact on businesses who depend on Ohio's education system to train workers to fill its workforce needs. Therefore, CSI recommends that the Department reconsider eliminating the courses that are proposed for removal in OAC 3301-35-04 (B)(1).

## **Conclusion**

The CSI office concludes that the Ohio Department of Education should not proceed with its proposed amendments to OAC 3301-35-04 and asks the Department to reconsider its proposal to remove the courses in OAC 3301-35-04 (B)(1). Removing courses in foreign language—including computer coding—technology, and business education will have an adverse impact on Ohio businesses whose success relies on a technologically skilled workforce.

The Department may proceed in filing the remaining nine proposed rules (OAC 3301-35-01, 3301-35-02, 3301-35-03, 3301-35-05, 3301-35-06, 3301-35-07, 3301-35-08, 3301-35-09, and 3301-35-10) with the Joint Committee on Agency Rule Review.