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OHIO LEGISLATIVE SERVICE COMMISSION

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H.C.R. 35
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Resolution Analysis

Version: As Adopted by the House

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SUMMARY

- Invalidates proposed amendments to Ohio Administrative Code 3301-35-04.

DETAILED ANALYSIS

Invalidating resolution

The resolution invalidates proposed amendments to Ohio Administrative Code (O.A.C.) 3301-35-04. The proposed amendments were filed by the Department of Education with the Joint Committee on Agency Rule Review (JCARR) on August 20, 2021. The amendments relate to curriculum and instructional programs in schools, and are described in more detail below.

The resolution is part of a procedure in continuing law that requires legislative oversight when an agency proposes to adopt, amend, or rescind an administrative rule. The procedure generally requires, among other actions, the agency to submit a proposed rule or amendment to JCARR at least 65 days before adopting it. During the 65-day period, JCARR may recommend that the Senate and House of Representatives adopt a concurrent resolution invalidating the proposed rule, amendment, or a part thereof. JCARR may recommend the resolution if JCARR makes any of the following findings:

1. The proposed rule or amendment exceeds the scope of the adopting agency's statutory authority.
2. The proposed rule or amendment conflicts with the legislative intent of the statute under which it was proposed.
3. The proposed rule or amendment conflicts with another proposed or existing rule.
4. The proposed rule or amendment incorporates a text or other material by reference and fails to meet specific requirements.

5. The agency has failed to prepare a complete and accurate summary and fiscal analysis of the proposed rule or amendment as required by continuing law.
6. The agency has failed to demonstrate that the regulatory intent of the proposed rule or amendment justifies its adverse impact on Ohio businesses.¹

The resolution specifies that findings (2), (3), (5), and (6) listed above apply to the proposed amendments to O.A.C. 3301-35-04.

If both chambers adopt the resolution, the proposed amendments cannot take effect, and the current version of the rule will stay in effect without the amendments. If one or both chambers fails to adopt the resolution, the Department may adopt the proposed amendments to the rule. Each chamber has until the later of October 24, 2021 (65 days after the proposed amendments were filed with JCARR), or the fifth voting session occurring after October 12, 2021 (the date JCARR recommended invalidation), to vote on the resolution.²

Rule 3301-35-04

Background – State Board of Education’s standards

The State Board of Education is required to prescribe minimum education standards that apply to all elementary and secondary schools in Ohio. It also is authorized to prescribe additional minimum operating standards for school districts.³ The State Board must issue or revoke charters to school districts and nonpublic schools that elect to seek charters based on whether the district or school complies with the State Board’s standards.⁴ The State Board’s standards for districts and schools are prescribed in O.A.C. Chapter 3301-35.⁵

Proposed rule

Students and stakeholders

Under the proposed rule 3301-35-04, school districts and chartered nonpublic schools must establish and communicate expectations for academic performance, attendance, and conduct for all students, regardless of a student’s gender, race, or ethnicity and regardless of whether the student is a student with a disability, economically disadvantaged, an English learner, or identified as gifted. The current rule requires a district or school to establish and communicate expectations regardless of gender, race, ethnicity, English proficiency, or disability.⁶

¹ R.C. 106.021.

² R.C. 106.023.

³ R.C. 3301.07(D)(2) and (3)

⁴ R.C. 3301.16.

⁵ See Ohio Administrative Code (O.A.C.) 3301-35-01 to 3301-35-09.

⁶ O.A.C. 3301-35-04(A)(1).

The proposed rule requires districts and schools to diagnose and assess the needs of students and other stakeholders, and use assessment result and state performance data and relevant local measures, to make decisions about curriculum, instruction, assessment, and goals. Under the current rule, rather than state performance data and relevant local measures, a district or school must use the value-added progress dimension.⁷

Similarly, the proposed rule requires districts and schools to monitor their state performance data and relevant measures, instead of just their performance index scores as under the current rule, as one factor in determining their effectiveness in helping students meet performance objectives.⁸

The current rule requires districts and schools to continually improve programs and policies to better meet student needs by, among other things, comparing the results of stakeholder evaluations to those of benchmark districts and schools. The proposed rule eliminates the requirement to make that comparison. Instead, it requires districts and schools to use collaborative teams to analyze and use data to assess improvement and identify implementation issues and academic successes and gaps.⁹

Curriculum

The proposed rule eliminates a requirement that, in addition to those subjects required by the Revised Code,¹⁰ districts must provide for study of:

1. Personal safety and assault prevention in grades K-6;
2. Foreign language;
3. Technology;
4. Family and consumer sciences; and
5. Business education.¹¹

Assessment system

Under the current rule, school districts must provide for an assessment system that aligns with their courses of study and includes prescribed items. The proposed rule expressly applies this requirement to chartered nonpublic schools and further modifies two of those prescribed items.

⁷ O.A.C. 3301-35-04(A)(2).

⁸ O.A.C. 3301-35-04(A)(3).

⁹ O.A.C. 3301-35-04(A)(4)(d).

¹⁰ See R.C. 3313.60 for the general K-12 curriculum requirements and R.C. 3313.603 for the minimum high school curriculum.

¹¹ O.A.C. 3301-35-04(B).

Specifically, the proposed rule requires the assessment system to include guidelines for using assessment results, state performance data, and relevant local measures for instruction, evaluation, intervention, guidance, and grade-promotion decisions. Under the current rule, the guidelines must instead use assessment rules and the value-added progress dimension.

The assessment system also must include written policies and procedures regarding the participation of students with disabilities and English learners, rather than just students with disabilities as under the current rule.¹²

Credits toward graduation

The current rule requires districts and schools to provide students with an opportunity to acquire knowledge and skills and earn credits toward graduation through a variety of methods, including several prescribed options. The proposed rule specifies that chartered nonpublic schools must provide students with such an opportunity only where applicable.¹³

In addition, the proposed rule eliminates the express requirement that districts and schools award credit, including for study abroad, to student who successfully complete high school courses or who have demonstrated competency through the successful completion of approved credit flexibility options.¹⁴ However, it maintains credit flexibility as a prescribed option and maintains that the district or school's policy for awarding credit for course or option completion must meet prescribed criteria maintained under the proposed rule.¹⁵

Student health and safety policies and procedures

The proposed rule requires that student health and safety policies and procedures be designed to ensure the wellness and safety of all students. It specifies those policies and procedures must comply with applicable local, state, and federal laws for health, fire drills, and safety. Finally, it requires the policies to include:

1. Vision and hearing screenings, referrals, and follow up;
2. The posting of emergency procedures and telephone numbers in classrooms for use by parents, students, and school personnel; and
3. All other requirements in law regarding student health, safety, and wellness.¹⁶

Chartered nonpublic schools

The proposed rule expressly applies the following requirements to chartered nonpublic schools:

¹² O.A.C. 3301-35-04(B)(3)(c) and (d).

¹³ O.A.C. 3301-35-04(D).

¹⁴ O.A.C. 3301-35-04(B)(3).

¹⁵ R.C. 3301-35-04(D)(2) and (E).

¹⁶ O.A.C. 3301-35-04(G).

1. The requirement to develop the school’s curriculum with input from and dialogue with parents, community members, and other stakeholders;¹⁷
2. The requirement that each course of study align with the school’s vision, mission, philosophy, educational goals, and strategic plan;¹⁸ and

The requirement to provide every student with opportunities to meet local course of study objectives.¹⁹

Miscellaneous

The proposed rule includes other stylistic changes that appear to be nonsubstantive.

HISTORY

Action	Date
Introduced	10-13-21
Adopted by the House (95-0)	10-13-21

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¹⁷ O.A.C. 3301-35-04(B).

¹⁸ O.A.C. 3301-35-04(B)(1)(b).

¹⁹ O.A.C. 3301-35-04(C).