The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### Regulatory Intent

1. Please briefly describe the draft regulation in plain language.
   
   *Please include the key provisions of the regulation as well as any proposed amendments.*

   The regulation 3301-52-01 “Appropriate uses of early childhood education screening and assessment information” is in place to ensure that early childhood programs 1) use early childhood education assessment and screening information consistent with the purposes and
intention for the assessments; 2) assure parents’ rights with regard to federal and state laws regarding privacy; 3) document annual training of staff related to use and placement of confidential child records, as well as obtaining parental consents; 4) provide written information to parents about the nature, method, timelines, and uses for screenings and assessments; and 5) provide written information to parents regarding the appropriate use of assessments and screenings at kindergarten entry including information that such assessments cannot be used to determine eligibility for kindergarten entrance.

The regulation is scheduled for a 5 year review in 2019 and no changes have been recommended to the rule. The rule is being reviewed for the Common Sense Initiative because early childhood programs referenced in this rule include not just public district sites, but also head start programs or other early childhood programs that are located in community based programs which are considered local businesses.

**NEW QUESTION:** Does the draft rule package require insurance and/or surety products as a condition of compliance? If yes, what measure did the agency take to determine if the financial responsibility instrument is readily available in the amounts required?

No.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

3301.07, Section 4.02 of Am. Sub. H.B. 282 of the 123rd General Assembly.

This section of law requires the State Board of Education to adopt rules addressing the use of screening and assessment data, including, but not limited to, protection of the identity of individual children through assignment of a unique but not personally identifiable code; parents’ rights; and the use of the data by school personnel as it relates to kindergarten entrance.

3. 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.*

Yes, this rule implements a federal requirement. Paragraph (B) of the rule references compliance with the Family Educational Rights and Privacy Act (FERPA, 34 CFR Part 99). This paragraph of the rule is already adopted and will enable the state to maintain approval to administer and enforce a federal law.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.
5. 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)?

To ensure early childhood programs at the state level are following appropriate practices for use of assessments and protecting family and children’s privacy as required by state and federal laws.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Programs will maintain documentation at their sites about training that is required for staff and programs will maintain documentation of written communications with parents about the use of assessments, timelines, and methods. Documentation is not submitted to ODE, but may be reviewed when ODE licensing inspectors are on-site for child care licensing inspections.

Development of the Regulation

7. 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.

This rule was posted for public comment from September 13, 2018 through October 13, 2018. There were no comments received during this period.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

There were no comments received from the public comment period of September 13, 2018 through October 13, 2018.

9. 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 rule is based on widely accepted social science research about appropriate use of assessments and the importance of confidentiality. The following highlights some of that research.

Importance of Appropriate Assessment Use: Casbergue (2010) writes that “[u]nderstanding children's development—across a variety of domains—is critically important to effective instruction. In order to make wise use of a variety of assessment tools, however, educators must first develop an understanding of the difference between summative testing and formative assessment, a distinction often lost on policy makers.”

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Lonigan, Allan, and Lerner (2011) write that “[t]he use of assessments that provide information on children’s developmental achievements in key areas of early literacy can provide teachers with the information they need to provide optimal learning experiences for children. Of course, assessment is not an end in and of itself. It is one part of an identification, intervention, and evaluation sequence. Whereas accurate assessment can be a powerful tool for acquiring information, its value can only be realized in the context of a well-developed intervention program that translates the information obtained from assessments into curriculum modifications and specific instructional tactics and goals that are matched to the individual needs of a child. These assessments can more clearly focus educational activities on building key early literacy skills, enabling the targeting of skill areas in which a child needs the most help, and providing a means for determining whether instructional goals have been achieved.”

**Importance of Confidentiality:** According to the U.S. Department of Education, “[s]tudents and their parents should expect that their personal information is safe, properly collected and maintained and that it is used only for appropriate purposes and not improperly redisclosed. It is imperative to protect students’ privacy to avoid discrimination, identity theft or other malicious and damaging criminal acts. All education data holders must act responsibly and be held accountable for safeguarding students’ personally identifiable information – from practitioners of early learning to those developing systems across the education continuum (P-20) and from schools to their contractors.”

10. 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?

The rule fulfills a requirement in statute (Section 4.02 of Am. Sub. H.B. 282 of the 123rd General Assembly).

11. Did the Agency specifically consider a performance-based regulation? Please explain.

*Performance-based regulations define the required outcome, but don’t dictate the process the regulated stakeholders must use to achieve compliance.*

Not applicable.

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3 U.S. Department of Education. “Safeguarding Student Privacy.”

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

ODE legal counsel researched the rule and found it does not duplicate other existing Ohio regulations.

13. 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.

ODE’s role in implementing the rules primarily consists of notification. School districts and other local early childhood programs are responsible for ensuring that they have written documentation of annual training for staff and written information provided to parents about use of assessments. ODE may review the documentation during on-site child care licensing inspections.

**Adverse Impact to Business**

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

The below cost analysis is from 2012, when this rule was initially proposed. We will be supplementing this Business Impact Analysis with an updated cost analysis once complete.

- **a. Identify the scope of the impacted business community;**
  - Community based Head Start programs.

- **b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
  - Employee time to ensure staff members are trained on maintaining confidential records and to document extent of annual staff training. In addition employee time to provide written information to families.

- **c. Quantify the expected adverse impact from the regulation.**
  - 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.

Local early childhood programs are already implementing this rule and this rule is not a new requirement. Therefore, local programs already have systems in place to implement it which means that the following estimated costs may be an overestimate when programs have set up paperwork and data reporting to monitor. The estimated cost of impact for this regulation is in terms of staff time. The estimated time will include:

- Time for an administrator to check that teachers are trained and to record this information would take approximately 30 minutes for a total of 15 classrooms.
(on average, a supervisor may have 15 classrooms to oversee). As such, it would take approximately 30 minutes to verify and document that teachers and teacher assistants have received training. Note that programs may have far fewer teachers to monitor and this time will be reduced in those circumstances.

- Time for a classroom teacher or assistant to complete the necessary paperwork/communications with the administrator to show that he or she has been trained in these areas. This is estimated at 20 minutes per staff person.
- Given these time estimates, the cost projections for these requirements are estimated as follows for a site that may have 15 staff members. The total figure is an estimate cost per site.

Table 1: Annual Per Site Cost Estimate for Training Documentation

<table>
<thead>
<tr>
<th>Position</th>
<th>Annual Salary (State Average) 6</th>
<th>Hourly Salary 7</th>
<th>Estimated Documentation Cost Per Site (Annual) 8910</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervisor</td>
<td>$64,519</td>
<td>$55.14</td>
<td>$27.57</td>
</tr>
<tr>
<td>Teacher</td>
<td>$56,593</td>
<td>$48.37</td>
<td>$241.85</td>
</tr>
<tr>
<td>Teaching Aide</td>
<td>$19,175</td>
<td>$16.39</td>
<td>$81.13</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td></td>
<td></td>
<td><strong>$350.55</strong></td>
</tr>
</tbody>
</table>

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Early childhood programs must ensure families and children’s privacy is maintained and that families are fully informed about the use of assessments and screenings. This use of staff

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4 Time minimum = 15 classrooms = 30 minutes (supervisor) and 15 classrooms * 20 minutes = 300 minutes = 5 hours
5 Time estimates were provided by an ODE Consultant with previous experience as a program administrator.
6 Data source: iLRC Teacher Data, “Average Salary of All School Personnel (State),” 2010-2011 School Year. http://ilrc.ode.state.oh.us/Power_Users.asp
7 Average hourly salary = Average annual salary / (180 school days * 6.5 hours per day = 1170 hours per school year or annual FTE hours)
8 Cost: $55.14 * .5 = $27.57;
9 Cost: $48.37 * .33 = $16.12 * 15 = $241.85
10 Cost minimum: $16.39 * .33 = $5.41 * 15 = $81.13
time is an essential cost of providing educational services and support for children and families.

**Regulatory Flexibility**

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

   No, the regulation requires documentation of training and family communications.

17. 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?

   Not applicable.

18. What resources are available to assist small businesses with compliance of the regulation?

   Technical assistance and training from ODE staff or State Support Teams.