

Guidance for Waiver Application

The *Operating Standards for Ohio Educational Agencies Serving Children with Disabilities* (Operating Standards) provides for waivers to be granted as follows:

Ohio Administrative Code (OAC) 3301-51-09 Delivery of Services

(K) Waiver

- (1) If a school district, county board of developmental disabilities (DD) or other educational agency exceeds the ratio requirements in paragraph (I) of this rule a waiver request must be filed with the Ohio department of education, office for exceptional children. A school district, county board of DD or other educational agency may be granted a waiver for individual service provider ratios or for age-range per instructional period as required by this rule.
- (2) Requests must be submitted in writing to the Ohio department of education, office for exceptional children or office of early learning and school readiness. The written request shall include, but not be limited to, the following:
 - (a) Identification of the specific rule for which a waiver is being requested;
 - (b) Specific period of time for which the waiver is requested; and
 - (c) Rationale for the request.
- (3) Each school district, county board of DD or other educational agency shall annually review the reason for its request as it plans for the delivery of services through the strategic planning process (see Waiver Action Plan) as required by paragraph (A)(1) to (A)(4) of rule 3301-35-03 of the Administrative Code.

Waiver Request Requirements and Supporting Documentation

The Ohio Department of Education (ODE), Office for Exceptional Children (OEC), may grant a waiver for up to one school year. All elements of the request must be met prior to approval.

ODE shall not grant waivers of the standards provided under IDEA, Ohio Revised Code (ORC) Chapter 3323 or OAC 3301-51 to public agencies if the result is the denial of a free appropriate public education (FAPE) to children with disabilities.

Additional requirements for waivers are set forth in the [Doe Consent Order \(October 2009\)](#).

The elements of the Waiver Application are:

1. District and Staff Information: Provide the school year of the waiver request, district and building information and information for the service provider affected by the waiver.
2. Students affected by the Waiver: Provide statewide student identifier (SSID) number, age and disability category of students affected by the waiver.
3. Area for which the waiver is requested: The number of students per instructional period with class size or age range indicated or per individual related service provider.

4. Duration: Indicate specific period of time for which the waiver is requested. The waiver request is effective for the current school year and conditions described.
5. Parent Notification: Provide documentation that notice of the waiver request has been provided to the parents of each child effected by the proposed waiver.
6. Rationale for the waiver request: Describe the reasons why the waiver is being requested including steps that were taken to avoid the necessity of a waiver.
7. Waiver Action Plan: Provide a plan and timeline for bringing the district into compliance within one year and no later than June 30th of the school year in which the request was granted. Provide contact information for the district staff member monitoring implementation of the Waiver Action Plan.
8. Assurances: The district superintendent assures:
 - a. Students with disabilities impacted by the waiver will receive a free and appropriate public education (FAPE) in the least restrictive environment (LRE);
 - b. The service provider has been informed of his/her responsibilities regarding the development and implementation of individualized education programs (IEPs) for children served in accordance with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) at 34 C.F.R. §300.323, 34 C.F.R. §300.324 and the Operating Standards at 3301-51-07;
 - c. The progress of each student impacted by the waiver will be monitored through the IEP and reported in the final report;
 - d. Affected staff are appropriately certified and licensed to provide services for students impacted by the waiver;
 - e. Special provisions necessary to provide appropriate instruction during the period in which the waiver is in effect have been made to assist the students and service providers;
 - f. Appropriate equipment, supplies and instructional materials in sufficient quantity are in place to support the number of students with disabilities and meet their instructional needs;
 - g. The district will submit a final report by June 30th of the current school year regarding the performance of students with disabilities impacted by the waiver and provide a written status report for the Waiver Action Plan submitted with the Waiver Application; and
 - h. The district assures that it will not submit a waiver for the same circumstance in the school year following the current waiver request.

Required documentation includes:

1. Provide documentation regarding the actions taken to avoid requesting a waiver-including, but not limited to, staffing considerations.

2. Provide SSID (statewide student identifier) number for each student affected by the waiver along with each student's age and disability category.
3. Provide documentation to verify the local school board approved the waiver request and assured that services will be provided consistent with the requirements under IDEA, Operating Standards and the Doe Consent Order, e.g. school board minutes pertaining to the waiver approval.
4. Provide documentation that notice of the waiver request has been provided to the parents of each child effected by the proposed waiver. The notice shall include the following:
 - a. A statement that FAPE cannot be denied due to the operation of the waiver;
 - b. Notice of how and when parents may present any concerns that they have about the proposed waiver to the public agency and ODE;
 - c. Notice that the public agency seeking the waiver will provide parents with a copy of *Whose IDEA Is This?* upon request;
 - d. Contact information for the person within the public agency to whom parents' concerns should be directed; and
 - e. Information regarding the pages on ODE's website that include information about waivers, including approval and denial, and contact information for low cost sources of legal assistance (www.education.ohio.gov, keyword search waiver database and keyword search legal services for low income Ohioans).

Requirements for Waivers that are Not Approved

If the district is not granted the waiver, the district must either:

1. Provide documentation verifying compliance; or
2. Provide a corrective action plan as to how the district will come into compliance with the date that corrective action must be completed. Should a district or other provider fail to meet the timeline in their corrective action plan, ODE-OEC may delay and ultimately move to withhold applicable state and/or federal funds.

Approval Notification

ODE-OEC will notify the district contact person by email regarding the status of the Waiver Application within two weeks of receiving the application.

Submission

Return completed Waiver Application by email.

Email: OECWaiver@education.ohio.gov

Monitoring

Further inquiry may be conducted when ODE-OEC deems it appropriate. Further inquiry may include, but is not limited to: a review of documentation pertaining to student progress; review of documentation pertaining to implementation of the required plan to remedy the need for the waiver; and/or an on-site visit to inspect the appropriateness of services or facilities.

Final Report

Due by June 30th of current school year:

1. Page 1 of the Waiver Application;
2. Waiver Action Plan documentation of completed actions to assure compliance with Rule 3301-51-09 Delivery of Services; and
3. Student performance data by SSID for students affected by the waiver:
 - a. Summary of progress reports for IEP goals/objectives; and
 - b. Performance and growth data for state assessments;
 - c. Optional: other data that represents student knowledge and skill development given the area in which the waiver is requested, such as formative assessment data.

Authority

[Operating Standards for Ohio Educational Agencies Serving Children with Disabilities, Ohio Administrative Code 3301-51-09 Delivery of Services](#)

[Doe Consent Order \(October 2009\)](#)