



Mike DeWine, Governor  
Dr. Stephanie K. Siddens, Interim Superintendent of Public Instruction

**Testimony Before the Joint Committee on Agency Rule Review (JCARR)  
Regarding Community Schools  
March 8, 2022**

Chairwoman Gavarone, Vice-Chairman Callender, and members of the committee, my name is Tony Palmer and I am Interim Chief Counsel at the Ohio Department of Education. In August 2021, based on conversations with then-Chairman Callender, former Superintendent of Public Instruction Paolo DeMaria committed the Department to increased engagement with the community school sector on issues raised by stakeholders with the Joint Committee on Agency Rule Review (JCARR) regarding the Department's regulation of community schools. Areas of concern include blended learning, dropout prevention and recovery schools, oversight of community school sponsors, sponsor evaluations, applications for new e-schools, and operator risk assessments.

The Department began this work in Fall 2021. The Department agreed to submit any needed rule changes to JCARR by February 2022, and Department staff and stakeholders continue to meet regularly on certain topics. Two sets of rules have been filed with the Common Sense Initiative (CSI) at this point. One set of rules, those relating to dropout prevention and recovery report cards, were reported out of CSI and were filed with JCARR last week. The purpose of this testimony is to update JCARR on the status of the Department's community school rules and its ongoing stakeholder engagement. I speak for the Interim Superintendent of Public Instruction, Dr. Stephanie Siddens, when I say that the Department and the State Board of Education are committed to transparency in this process and improving the Department's relationship with the community school sector, by collaborating to review and make improvements in policies and regulations.

**Blended Learning**

Stakeholders previously raised concerns with the Department's interpretation of the definition of "blended learning," which is a hybrid learning model using both on-site and online instruction. The specific complaint was that the Department requires students who attend a community school that provides blended learning to spend a "majority of time on-site" and that this requirement is articulated not through rule, but rather through other Department guidance, policy, and technical documents. Stakeholders alleged the requirement enforces a principle of law or policy that establishes a legal regulation or standard that would not otherwise exist and should have been supplanted by its restatement in a rule.

The General Assembly has resolved this issue. In H.B. 110 and S.B. 229 of the 134<sup>th</sup> General Assembly, the legislature amended the definition of "blended learning" to clarify that it is "the delivery of instruction in a combination of time *primarily* in a supervised physical location away from home and online delivery whereby the student has some element of control over time, place, path, or pace of learning *and includes*

***non-computer-based learning opportunities.***<sup>1</sup> These amendments took effect on September 30, 2021, and December 14, 2021, respectively. Additionally, H.B. 110 added a new definition of “online learning” in which “students work primarily from their residences on assignments delivered via an internet- or other computer-based instructional method.”<sup>2</sup>

With these changes, the General Assembly made clear that these two types of learning models – blended and online – are distinguished by where students partake in the majority of their instruction. The statute is clear that blended learning requires students to receive most of their instruction on site. Therefore, there is no need for the State Board of Education to adopt a rule on this matter.

### **Dropout Prevention and Recovery Schools**

Stakeholders had two complaints regarding the State Board’s rules on dropout prevention and recovery schools; first, that the rules were significantly past the five-year rule review date and, second, that certain potential changes to the rules were implemented prior to JCARR completing its review of a new version of the rules. The rules at issue are O.A.C. 3301-102-10, -11 and -12. These rules address the report card for dropout prevention and recovery community schools and outline the requirements for assessing student academic growth at these schools.

As a reminder, the State Board of Education adopted proposed changes to these rules in June 2018 and submitted them to CSI the same month. In October 2018, CSI notified the Department that they had received over 100 emails regarding the rules package. In 2019, the Department informed CSI that the rules were being put on hold due to the formation of a State Board workgroup to fully review the stakeholder feedback and revisions. This workgroup issued a report and recommendations in December 2019. Soon thereafter, a legislative committee also convened to study issues related to dropout prevention and recovery schools. That group met until March 2020, but work was never completed due to the COVID-19 pandemic.<sup>3</sup>

As of last summer, given the passage of time and extensive feedback, the Department felt it was appropriate to reengage stakeholders and finalize the rules. To that end, the Department held several meetings with representatives of dropout prevention and recovery community schools to listen to their concerns. Their primary concern was a department requirement that 75% of a dropout prevention and recovery community school’s students participate in state assessments and that failure to meet the minimum participation rate led to a lower report card rating for the school. While this requirement was included in the version of O.A.C. 3301-102-11 that the State Board adopted in 2018, it was removed from the proposed revisions to the Administrative Code and is no longer being implemented.

In the most recent round of feedback on the dropout prevention and recovery report card rules, stakeholders strongly encouraged the State Board to adopt no changes to the rules package. The Department considered their feedback seriously and agreed that a minimum test participation rate is best addressed by the General Assembly in

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<sup>1</sup> R.C. 3301.079(J)(1).

<sup>2</sup> R.C. 3301.079(J)(2).

<sup>3</sup> H.B. 110 of the 134<sup>th</sup> General Assembly repealed the legislative study committee.

statute and that the Department will not impose a minimum participation rate on state assessments in absence of a legislative change. Consequently, the State Board adopted no revisions to O.A.C. 3301-102-11 and 3301-102-12 and made only non-substantive revisions to O.A.C. 3301-102-10 to update statutory references.

The Department filed the three rules with CSI on January 6, 2022. Public comment closed on January 13, with CSI receiving three comments. The comments supported the Board's approach of no changes. The Common Sense Initiative issued a memorandum on February 28, concluding that the Department should proceed in filing the proposed rules with JCARR. The Department filed the rules with JCARR on March 3. The Chapter 119 hearing on rule 3301-102-10 is scheduled for the April meeting of the State Board of Education.

### **Oversight of Community School Sponsors**

There are several rules regarding the Department's oversight of community school sponsors: O.A.C. 3301-102-02 to -05 and 3301-102-07. Proposed changes to this rules package were adopted by the State Board of Education in October 2017 and additional non-substantive changes were made in July 2018 based on feedback from CSI. CSI approved the rules in August 2018. A Chapter 119 hearing held in November 2018 during the State Board meeting elicited further public comment. The proposed rules were scheduled to go before JCARR in December 2018, but the Department voluntarily withdrew them from consideration based on the public comment. After pulling the rules, the Department engaged those who provided comments to clarify their issues and identify language that might resolve concerns. While the Ohio Association of Charter School Authorizers (OACSA) offered suggested changes to the proposed rules in September 2019, further review of the rules stalled due to the pandemic.

The Department acknowledges that the community school landscape, particularly with respect to sponsors, has evolved since the last iteration of the proposed rules and that the rules should be revisited. In September 2021, the Department convened a sponsor workgroup, which met seven times over the course of several months. Discussions with the workgroup covered various concerns with the proposed rules.

Based on the workgroup's valuable feedback, the Department made several significant changes, including:

- Removing the originally proposed inclusion of the Department as a third-party beneficiary in contracts between sponsors and community schools. The prior version of the proposed rules would have named the Department as a third-party beneficiary in contracts between sponsors and community schools, which would have allowed the Department to intervene with a school if the sponsor failed to take appropriate action to prevent a mid-year closure or other negative outcome. This was the largest concern during the original engagement and development of the rules in 2017-2018. The Department recognized the concerns raised by this language and agreed to remove it from the proposed rules.
- Requesting potential sponsors to provide evidence of being able to adhere to Quality Practices as required by the sponsor evaluations. This change ensures

that sponsors are considering quality practices from the outset and will not be unprepared for their first evaluation.

- Identifying criteria that the Department will consider in determining whether to grant a sponsor's request to modify or renew its sponsorship agreement with the Department. This change provides clarity for sponsors by setting expectations about the factors the Department considers important.
- Listing specific indicators of noncompliance for which the Department may place a sponsor on probation. Again, the Department's goal is to clarify expectations by describing the type of actions that could result in negative consequences for a sponsor.

The Department filed the sponsor rules package with CSI on January 12, 2022, and yesterday submitted a response to the public comments received by CSI. Although workgroup members have expressed to CSI that many of their concerns remain unaddressed, the Department has responded to those concerns both in meetings of the workgroup and in written replies to comments received during the Department's public comment period, prior to approval by the State Board. The Department provided sound rationale for making the proposed changes to the administrative rules, while balancing the concerns of stakeholders and fulfilling the Department's obligations as the regulatory agency. The State Board of Education ultimately approved the rules with a few minor modifications.

### **Sponsor Evaluations**

The Department is excited about the work occurring on sponsor evaluations. Like with the sponsor rules, the Department created a special workgroup to explore options for redesigning the community school sponsor evaluation. Both sponsors and the Department have long held that the evaluation process is overly burdensome, bureaucratic, and document heavy. Making improvements to sponsor evaluations will likely require statutory changes. Using the workgroup as a forum for collaboration, the Department hopes to develop a joint legislative proposal to reform the evaluations in a way that all parties can support.

At the first meeting of the workgroup in August 2021, the Department proposed guiding principles to inform discussions going forward. Sponsor evaluations should:

- Focus on the continuous improvement of sponsors, schools, and the sector as a whole, including academic improvement;
- Reflect the work of sponsors, with less emphasis on school-level operations;
- Reduce documentation, redundancy, and burden for all involved while still maintaining the integrity of the evaluation itself;
- Rely on Ohio and national best practices for sponsorship;
- Align to state policies on incentives and benefits for high-quality sponsors, including thresholds for number of schools sponsored, length of contracts, and quality school funding opportunities.

At the request of, and with the input of, workgroup members, Department staff crafted a draft proposal for the improved sponsor evaluation. The Department also asked members to submit their own proposals. Stakeholders recently shared a proposal and the Department is reviewing it prior to the workgroup's next meeting. There is general

agreement that the evaluation should continue to have a compliance component and a quality practices component as currently required by statute.<sup>4</sup> The workgroup members are continuing to discuss their stance on the inclusion of the academic component and the Department has suggested ideas to give sponsors credit when schools improve their academic performance, even if they do not meet established goals, and to incorporate other academic measures beyond those on the report cards. Such changes could give a more complete picture of how schools and students are performing. A subset of the workgroup members will meet to discuss additional or different ways to include academic performance in the evaluation.

A State Board of Education member joined the last workgroup meeting and will participate in future meetings to hear from stakeholders and share the Board's perspective. This is an important addition to support any legislative proposal and to inform the State Board in any subsequent adoption of rules for the evaluation.

### **E-School Applications**

The current application to open a new e-school is based on O.A.C. 3301-102-09. The application was updated to reflect a January 2020 change in the rule requiring any full-time equivalency determinations against a sponsor or operator to be a factor in the application. More recently, in September 2021, the Department met with representatives from Charter School Specialists to discuss its concerns. Based on that discussion, the Department made key changes to the application, including:

- Eliminating the scoring of information about the proposed school, such as area of enrollment and the demographics of the community the school would serve, which were not required by rule, and redistributing those points to other sections of the application;
- Reducing the points assigned to the years of experience the proposed sponsor and operator had working with e-schools.

The Department also intends to revisit the rubric used to score e-school applications. One improvement the Department would like to make is to give greater consideration to recent years of academic performance for sponsors and operators associated with new e-schools. The Department will engage stakeholders to determine other changes that could improve the e-school application process.

### **Operator Risk Assessments**

Lastly, we wanted to follow up on concerns regarding the operator risk assessment. The Department of Education developed the operator risk assessment to meet federal compliance requirements and address a state audit finding. As a recipient of federal formula funds and competitive grants, including the Charter School Program Grant, the Department is subject to the [Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#). Under federal regulations, pass-through entities such as the Department must "evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring" (2 CFR 200.332).

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<sup>4</sup> R.C. 3314.016.

As you know, the Ohio Auditor of State has monitoring responsibility over the Department with respect to federal funds. In both an FY2019 and FY2020 single audit finding, the Auditor of State determined that the Department did not fully comply with the federal subrecipient monitoring requirements since the Department's processes did not provide reasonable assurance that community schools with operators have effective controls in place to mitigate financial and performance risks and provide accountability over federal funds. While one could argue that existing provisions in the Revised Code sufficiently address the relationship between the governing authority and operator, the Auditor disagreed and issued the finding. Auditors noted that these conditions could result in misuse of funds and noncompliance with federal requirements, subjecting the Department to U.S. Department of Education-imposed sanctions. Additionally, auditors recommended that the Department evaluate its current control procedures for subrecipient monitoring and update them to include specific procedures for community schools with operators, which should include an assessment of the risk posed by conflicts of interest, related party transactions, and insufficient segregation of duties. In its determination letter issued in October 2020, the U.S. Department of Education agreed with the auditor's recommendations and required documentation of corrective action from the Department.

The operator risk assessment is the tool that enables the Department to meet the requirements of the U.S. Department of Education and the Auditor of State. As a public body, a community school is ultimately responsible for spending federal funds in accordance with federal law or the grant award. The operator risk assessment is designed to evaluate if the contractual relationship between the school and its operator poses any concerns regarding the use of federal funds.

Importantly, the tool is a self-assessment to be completed by the schools themselves. In its initial pilot of the risk assessment, the Department reviewed the contracts between schools and their operators and assigned a level of risk (low, medium, or high) and, depending on the risk category, posed questions speaking to the school's internal controls. Based on feedback from stakeholders during the pilot phase, the Department eliminated the ratings and converted the tool to a self-assessment. While it is true that the Department has access to operator contracts and other information sought in the risk assessment, there is considerable benefit to having schools review those contracts in the context of how they deal with federal funds. The review is an opportunity for a school to identify where it may need to strengthen internal procedures to maintain adequate oversight of federal funds. Program offices within the Department assess risk for districts and community schools annually, looking at factors such as award size, academic performance, recent audit findings, and other factors specific to individual programs. While the risk assessment is specific to community schools with operators, it is part of a larger risk mitigation strategy throughout the entire agency. The self-assessment enables program offices to know where schools might face challenges in mitigating risk and directs their monitoring efforts.

This tool is not a punitive measure, nor does it pass judgment on the practice of having an operator. The Department does not withhold funding based on the results of the assessment. If the results indicate a potential concern, the Department will provide technical assistance and work with the school, operator, and sponsor to find a solution.

## **Conclusion**

I appreciate the opportunity to update JCARR on the work of the State Board of Education, the Department and stakeholders on the community school rules. Two of the rule packages (OAC 3301-102-10, 11 and 12 and 3301-102-02, 03, 04, 05 and 07) brought to JCARR's attention last summer have been submitted to CSI. One of those rule packages has been filed with JCARR, with a public hearing to be held at the April meeting of the State Board of Education. Two other issues raised by stakeholders to JCARR do not require rules – blended learning has been clarified by statute and the operator risk assessment is a self-assessment that serves as an internal control. As noted earlier, the sponsor evaluation redesign workgroup continues to meet regularly with the goal of making sponsor evaluations more efficient. Finally, the Department will be seeking stakeholder feedback on the e-school application and scoring rubric and will propose any needed changes to the rule to the State Board of Education for adoption.

The leadership of the State Board and the Department are committed to continuing the collaborative work with the community school sector that began last summer. On February 25, Board President Charlotte McGuire and the Interim State Superintendent, along with other Department staff, met with a diverse group of stakeholders representing community schools, sponsors, operators, nonprofit partners, and advocacy groups. Based on that discussion, the Department is developing an action plan to be a better resource for the community school sector and to create a regular forum for engagement on needed legislative and policy issues. The level and frequency of conversations with the community school sector is increasing at the Department. A strong, cooperative relationship between the Department and community school stakeholders is critical to ensuring positive outcomes, such as fair and effective rules, efficient processes, and high-performing students and schools. I am happy to answer any questions you may have.