



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

**MEMORANDUM**

Date: June 14, 2022

From: Jessica Shields, Assistant Legal Counsel

Through: Anthony Palmer, Chief Legal Counsel

To: State Board of Education Members

Re: Ohio Administrative Code 3301-51-11 / Preschool Children Eligible for Special Education

---

Ohio Administrative Code 3301-51-11 is on the State Board of Education's ("Board") June agenda for a vote. The Integrated Student Supports Committee reviewed the rule in June 2022 and recommended the approval of the changes summarized below. The rule outlines standards for the education of preschool children with disabilities. The rule's enabling statute, ORC Section 3323.02, requires the Board to establish rules and standards for the provision of special education and related services for all children with disabilities who are at least three years of age and less than twenty-two years of age residing in the state.

The rule is being amended as a result of stakeholder feedback. These proposed revisions change the definitions in the rule as the following:

- (A) A "public school preschool general education classroom" will have a maximum of eight students with disabilities. This is amended from the previous maximum of six students with disabilities. Language was added to further define the public school preschool general education classroom to allow for fifty percent or fewer students with disabilities in the classroom. This classroom was added to the placement options for students with disabilities.
- (B) A "public school preschool integrated classroom" will allow for fifty percent or fewer students with disabilities.

The rule was posted for public comment from May 19, 2022 through June 1, 2022. To make it easier to identify the changes, the attached rules have been marked to show the changes that have been made by underlining the new language and a strikethrough to show any deletions. Attached is a proposed resolution for your consideration.

**3301-51-11 Preschool children eligible for special education.**

(A) Except as otherwise specified in this rule, the definitions in rule 3301-51-01 of the Administrative Code apply to this rule and to preschool special education.

(1) Definitions

- (a) “Co-taught class” means a class operated by a public school, educational service center, or county board of developmental disabilities that is taught by two licensed teachers: one licensed general education teacher and one licensed intervention specialist.
  - (i) Both teachers are assigned to the classroom for the full duration of each class session.
  - (ii) All children in the co-taught class are on the general education teacher’s roster, and the children with disabilities are also counted in the intervention specialist’s caseload.
  - (iii) A maximum of eight children with disabilities (i.e., children with IEPs) are enrolled in the class; the department may grant a waiver (on a case-by-case basis) for additional children with disabilities to be enrolled in a co-taught class.
  - (iv) The class must have more children without disabilities enrolled than children with disabilities.
  - (v) The co-taught class shall be considered a general education class for program licensing purposes.
- (b) “Full-day class session” means a class session of four or more hours.
- (c) “Half-day class session” means a class session of fewer than four hours.
- (d) “Itinerant services” for a preschool child who is eligible for special education services means services provided by intervention specialists or related services personnel which occur in the setting where the child, the child and parent(s), or the child and caregiver are located.
- (e) “Kindergarten age eligible” means the child is age eligible pursuant to section 3321.01 of the Revised Code in his or her school district of residence.
- (f) “Public school preschool special education class” means a class in which the lead teacher is qualified to teach preschool special education according to rule 3301-37-04 of the Administrative Code, the lead teacher is responsible for specially designed instruction for one or more children with IEPs enrolled in the class, and at least fifty-one per cent of the students enrolled in the class are children with disabilities.
- (g) “Regular early childhood setting” means any of the following educational settings in which fifty per cent or less of the students are children with disabilities:
  - (i) Public school preschool general education class, as defined in this rule;
    - “Public school preschool general education class” means a class that meets all of the following criteria:
      - (a) Operated by a public school (including community schools), educational service center, or

\*\*\*DRAFT – NOT FOR FILING\*\*\*

county board of developmental disabilities;

- (b) Taught by a general education teacher or dual-licensed teacher who meets the lead teacher qualifications for a preschool general education class according to rule 3301-37-04 of the Administrative Code;
  - (c) Includes instruction in the general education curriculum aligned to Ohio’s Early Learning and Development Standards;
  - (d) The lead teacher of a public school preschool general education class shall not serve as the intervention specialist of record or IEP case manager for any children with disabilities (i.e., children with IEPs), even if the individual holds appropriate licensure for those roles;
  - (e) ~~Beginning July 1, 2020, includes a~~ maximum of ~~eight six~~ children with disabilities (i.e., children with IEPs) enrolled in a public school preschool general education class that is taught by a general education teacher who meets the lead qualifications outlined in paragraph (A)(1)(a)(ii) of this rule, and the class must be made up of fifty per cent or fewer ~~have more~~ children with~~out~~ disabilities enrolled than children with~~out~~ disabilities; the department may grant a waiver (on a case-by-case basis) for additional children with disabilities to be enrolled.
- (ii) Public school preschool integrated class, as defined in this rule:
- “Public school preschool integrated class” means a class that meets all of the following criteria:
- (a) Operated by a public school (including community schools), educational service center, or county board of developmental disabilities;
  - (b) Taught by a general education teacher or dual-licensed teacher who meets the lead teacher qualifications for a preschool special education class according with rule 3301-37-04 of the Administrative Code;
  - (c) Fifty per cent or fewer of the students in the class are children with disabilities; and
  - (d) The lead teacher of a public school preschool integrated class may serve as the intervention specialist of record or IEP case manager for any children with disabilities (i.e., children with IEPs) enrolled in the public school preschool integrated class, if the individual holds the appropriate licensure.
- (iii) Non-public school preschool program, as defined in this rule; or
- “Non-public school preschool program” means a program that meets all of the following:
- (a) A chartered nonpublic school licensed by the Ohio department of education or a program licensed by the Ohio department of job and family services (e.g., head start or community child care program licensed by ODJFS); and
  - (b) A program having a three-, four-, or five-star rating in “Step Up to Quality” (SUTQ) in accordance with H. B. 49 (see section 265.2, 132nd General Assembly) and H. B. 64 (see section 263.20, 131st General Assembly). The ratings of each program shall be determined

\*\*\*DRAFT – NOT FOR FILING\*\*\*

in accordance with rule 5101:2-17-01 of the Administrative Code.

(iv) Head start preschool program, as defined in 45 CFR 1305.2.

All references to the term “regular education” used in the federal regulations at 34 C.F.R. part 300 shall have the same meaning as this definition

(h) “Service provider location” means the child travels to the service provider’s location to receive IEP services (e.g., when a child receives speech therapy in the speech therapist’s office in the school building).

(i) “Support for school personnel services” may include modeling specially designed instruction, preparing materials for use by others, co-planning instruction or interventions, coaching, or otherwise consulting with a family member, caretaker, general education teacher, intervention specialist, related services personnel, paraprofessional, or other person who provides care, education, or related services to the child.

(B) Except as otherwise specified in this rule, all preschool programs are required to comply with Chapter 3301-37 of the Administrative Code, child day-care programs.

(C) Free appropriate public education. A school district who provides preschool special education shall comply with rule 3301-51-02 of the Administrative Code.

(D) Child find. A school district who provides preschool special education shall comply with rule 3301-51-03 of the Administrative Code, except as otherwise specified in this paragraph.

(1) A school district may choose to use the term “developmental delay” under the following conditions, as defined in rules 3301-51-01 and 3301-51-03 of the Administrative Code, for children who are experiencing developmental delays and who, by reason thereof, need special education and related services:

(a) The applicability of the term shall be based upon the individual needs of the child as determined by the evaluation team or the IEP team and other qualified professionals;

(b) In addition to the assessments required in paragraph (G)(1) of this rule, results of appropriate diagnostic instruments and procedures may also be used to help make the determination that a child has a “developmental delay.” A developmental delay may be substantiated by a delay of two standard deviations below the mean in one or more of the areas of development or 1.5 standard deviations below the mean in two or more of the areas of development listed in paragraph (D)(1)(c) of this rule. The results shall not be used as the sole factor in making the determination that a child has a developmental delay.

(c) “Developmental delay” means a child who is experiencing a delay as determined by an evaluation team, IEP team, and other qualified professionals in one or more of the following areas of development:

(i) Physical development;

(ii) Cognitive development;

- (iii) Communication development;
- (iv) Social or emotional development; or
- (v) Adaptive development.

(2) Interagency agreements

Each school district shall annually review interagency agreements with all partners to ensure a free appropriate public education (FAPE) is provided to all preschool children who are eligible for special education services between the ages of three through five residing in the school district. At a minimum, agreements with the following partners are required:

- (a) "Head Start" programs within the school district's service delivery area that provide for:
  - (i) Service coordination for preschool children who are eligible for special education services, three through five years of age, in a manner consistent with the state interagency agreement for service coordination with "Head Start"; and
  - (ii) Transition of children eligible for special education and related services as a preschool child at age three.
- (b) The county agency responsible for "Part C Early Intervention" delivery system that provides for the transition of children from Early Intervention services to preschool special education and related services at age three in a manner consistent with the state interagency agreement for service coordination with "Head Start." The agreement must include, but is not limited to, the following requirements:
  - (i) A process by which strategies are evaluated for effectiveness and appropriate revisions to the agreement are made;
  - (ii) A process by which "Early Intervention" refers any child who is forty-five days or fewer from his or her third birthday and is suspected of having a disability. A child referred to the district forty-five days or fewer from his or her third birthday must have an evaluation completed within sixty days of parental consent for evaluation, but an individualized education program (IEP) is not required by his or her third birthday;
  - (iii) Shared responsibilities for evaluating any child suspected of having a disability referred to "Early Intervention" at least forty-six days before his or her third birthday but not more than ninety days before his or her third birthday;
  - (iv) Shared responsibilities for child find, including locating, evaluating, and identifying children with disabilities birth through age five; and
  - (v) Timelines and processes for sharing information about any child who may be transitioning as a preschool child eligible for special education services from "Early Intervention" services to special education and related services.
- (c) Agencies within the school district's service delivery area providing special education services (e.g. county boards of developmental disabilities, education service centers) for identification, service

\*\*\*DRAFT – NOT FOR FILING\*\*\*

delivery, and funding to adequately serve preschool children who are eligible for special education services three through five years of age. The agreement must include, but is not limited to, the following requirements:

- (i) A process by which strategies are evaluated for effectiveness and appropriate revisions to the agreement are made;
- (ii) Shared responsibilities for evaluating any child suspected of having a disability;
- (iii) Shared responsibilities for child find, including locating, evaluating, and identifying children with disabilities; and
- (iv) Timelines and processes for sharing information about any child who may be transitioning as a preschool child into special education services.

(3) Transition from "Part C Early Intervention"

Each school district is responsible for the following activities related to transition for a child receiving Early Intervention services under part C of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA):

- (a) If invited by a representative of the part C system, a school district representative shall attend a conference to discuss transition from "Early Intervention" services to preschool.
  - (i) The school district shall not delay or refuse participation in the transition conference because of residency disputes or the absence of a birth certificate. A school district may use the thirty days following the transition conference to confirm residency and gather other enrollment documentation, or document attempts to gather such evidence.
  - (ii) The transition conference may occur up to nine months before a child's third birthday.
  - (iii) The school district shall document participation in the conference.
- (b) The date of referral to the school district shall be the earliest of the following:
  - (i) One hundred fifty days prior to the child's third birthday, if the transition planning conference or notification from part C occurs more than one hundred fifty days prior to the child's third birthday; or
  - (ii) The date the part C representative first notifies the school district about the child, if this date is within one hundred fifty days prior to the child's third birthday; or
  - (iii) The date of the transition planning conference, if the transition planning conference occurs within one hundred fifty days prior to the child's third birthday.
- (c) At the parent's request, the school district shall invite the part C service coordinator to the initial IEP meeting.
- (d) If a child is eligible for special education and related services as a preschool child, the school district shall work with the family to ensure an IEP is in place and implemented by the child's third

\*\*\*DRAFT – NOT FOR FILING\*\*\*

birthday. If the child's third birthday occurs during the regular school year, services must begin by the child's third birthday.

(e) The IEP team must consider extended school year services as part of the IEP process for children transition from part C services. A school district shall not require any child to have previous school experience to receive extended school year services. Based upon data available from the part C system, the IEP team shall determine if extended school year services are required as outlined in rule 3301-51-02 of the Administrative Code.

(f) A school district determined by the Ohio department of education to be noncompliant with the transition timeline to have an IEP in place by an eligible child's third birthday:

(i) Shall develop a corrective action plan in addition to the interagency agreement. The corrective action plan must include the signature of a representative of the agency responsible for "Part C Early Intervention" services; and

(ii) May have funds reduced or terminated by the Ohio department of education.

(E) Confidentiality. A school district who provides preschool special education shall comply with rule 3301-51-04 of the Administrative Code.

(F) Procedural safeguards. A school district who provides preschool special education shall comply with rule 3301-51-05 of the Administrative Code.

(G) Evaluations. A school district who provides preschool special education shall comply with rule 3301-51-06 of the Administrative Code, except as otherwise specified in this paragraph.

(1) Eligibility. Sufficient information shall be obtained using a variety of information sources to confirm that a disability exists. Eligibility for special education and related services as a preschool child shall be determined on the basis of multiple sources of information, including, but not limited to:

(a) Data from part C for children transitioning from early intervention services and information from any current community or preschool program providers;

(b) Observations in more than one setting and in multiple activities shall be conducted after obtaining parental consent for such observations;

(c) Information provided by the parent or caregiver;

(d) Results of at least one criterion-referenced assessment; and

(e) Results of at least one norm-referenced assessment.

(2) Based on the variety of sources of information listed in paragraphs (G)(1)(a) to (G)(1)(e) of this rule, a group of qualified professionals and the parent of the child shall determine if the child has a disability and is eligible for special education and related services as a preschool child.

(a) At a minimum, the group of qualified professionals must include two or more representatives of the school district who collectively meet the following requirements:

\*\*\*DRAFT – NOT FOR FILING\*\*\*

- (i) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of the child;
  - (ii) Qualified to provide or supervise the provision of instruction in the preschool general education curriculum;
  - (iii) Authorized to make decisions about the use of school district resources for special education and related services; and
  - (iv) Qualified to interpret the instructional implications of evaluation results.
- (3) A school district must ensure that sufficient resources are available to conduct evaluations during the summer months and meet the timelines described in rule 3301-51-06 of the Administrative Code.
- (4) A preschool child eligible for special education services shall be at least age three and not age six, with the following exception:
- (a) A child younger than three years of age may be eligible if the child will be three by October thirty-one of the current calendar year, and the child will receive special education and related services beginning the first day of the school year, unless an alternative start date is determined by the IEP team, which must include the child's parent.
  - (b) A child who is age eligible for kindergarten, but not compulsory school age, may remain in preschool special education through the completion of the school year despite turning six under the following conditions:
    - (i) School-age services must be considered during the IEP process for a child who will be age eligible for kindergarten in the following school year;
    - (ii) A child who is eligible for preschool special education under the category of developmental delay and turns six during the school year must have a preschool reevaluation prior to age six to determine eligibility under one of the other eligibility categories.
- (H) Individualized education program (IEP). A school district who provides preschool special education shall comply with rule 3301-51-07 of the Administrative Code.
- (I) Parentally placed nonpublic school children. A school district who provides preschool special education shall comply with rule 3301-51-08 of the Administrative Code. Nothing in this section is intended to change the circumstances under which a district is or is not required to pay for the cost of FAPE pursuant to paragraph (B)(8) of rule 3301- 51-08 of the Administrative Code.
- (J) Delivery of services/least restrictive environment. A school district who provides preschool special education shall comply with 34 C.F.R. 300.114 to 300.118 and rule 3301-51-09 of the Administrative Code.
- (1) In ensuring that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services, a school district shall annually prepare, post publicly, and make available to parents during the evaluation process; a list of the available preschool education service options in the community. This list shall not be limited to service providers within the geographic boundaries of the district but shall include providers outside the limits of the school district



\*\*\*DRAFT – NOT FOR FILING\*\*\*

boundaries that may be more easily accessible to children with disabilities living within the boundaries of the school district. This list shall inform the discussions and decision on the appropriate placement of each child with a disability.

- (2) In considering appropriate placement options consistent with the requirement to service students in the least restrictive environment, the IEP teams shall consider available options:
  - (a) A public school preschool general education class or a non-public school preschool program in which no more than eight children with disabilities are enrolled.
  - (b) A regular early childhood education setting in which ~~less than~~ fifty per cent or fewer of the students are children with disabilities,
  - (~~cb~~) A public school preschool integrated class in which ~~only~~ fifty per cent or fewer of the students are children with disabilities,
  - (~~de~~) A public school preschool special education class in which more than fifty per cent of the students are children with disabilities,
  - (~~ed~~) A special school,
  - (~~fe~~) A home or service provider location.
- (3) The placement decision made annually by the IEP team, which includes the parents, shall include consideration of the child being educated in the school that he or she would have attended if nondisabled. Notwithstanding the foregoing, the IEP can require a different placement if it is determined that there would be a potential harmful effect on the child or on the quality of services that he or she needs. This determination could result in the child staying in his or her current class or program, as the case may be.
- (4) A child who already participates in a regular early childhood setting when identified as a child with a disability shall remain in the program in which the child is enrolled unless the IEP team determines that it is unable to serve the child consistent with the provisions in paragraph (J)(3) of this rule. A child with a disability shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. Removing a child from his/her general education setting (such as, regular routines or activities) or removing a child from nondisabled peers to provide specially designed instruction and/or related services requires individualized justification within the child's IEP.

Nothing in this rule shall restrict an IEP team from placing a child in a non-public preschool environment which does not have a three-, four- or five-star rating in the "Step Up to Quality Program" if the IEP team, which must include the parent, determines the placement is in the best interest of the child.

(5) Preschool services.

- (a) When determining services, the school district shall consider the requirements in rule 3301-51-09 of

\*\*\*DRAFT – NOT FOR FILING\*\*\*

the Administrative Code and the following factors:

- (i) The child’s ability to participate and progress in the general early childhood curriculum;
- (ii) The child’s socialization needs; and
- (iii) The child’s educational and developmental progress.

(b) Unless otherwise specified by the IEP team, services shall be provided for all preschool children eligible for special education services in accordance with the following:

- (i) A child served in the home or service provider location must be provided a minimum of one hour of instruction per week in the general education curriculum that includes specially designed instruction; or
- (ii) From the effective date of this rule children served in any setting other than home or service provider location must be provided a minimum of three hundred sixty hours of programming per year, which must include instruction in the general education curriculum, and a minimum of one hour of specially designed instruction or related services per week, or a combination of specially designed instruction and related services; and
- (iii) For all preschool children receiving special education services “support for school personnel services” must be considered during each IEP meeting.

(c) A child with a visual and/or hearing impairment who receives services in a non-categorical classroom shall have a minimum of support for school personnel services provided by an intervention specialist licensed in the area for the child’s sensory impairment(s) (e.g, PK-12 "Intervention Specialist for Hearing Impaired").

(6) Measuring child progress.

A school district shall measure a child’s progress using multiple sources of information. Information must be obtained across multiple settings, representing a variety of interactions and input from parents and staff involved with the child.

- (a) Information shall be analyzed to evaluate the conditions under which desired behaviors occur and if the desired behavior is not demonstrated, an analysis of contributing factors shall be conducted and changes in the environment, curriculum, and instruction shall be considered.
- (b) Information on a child’s progress shall be reported in the manner prescribed by the Ohio department of education.

(7) Preschool personnel qualifications.

Personnel providing preschool services shall be appropriately credentialed as defined by Chapter 3301-24 of the Administrative Code.

Intervention specialists who are assigned to categorical preschool classrooms for children with visual or hearing impairments must have the appropriate license required for the categorical area.

(8) Preschool supervisory services.

Each school district shall designate a qualified individual to ensure preschool special education services are provided in accordance with all applicable rules, regulations, and laws. The designated individual shall be responsible for the following:

- (a) Ensuring the development and implementation of an interagency agreement as outlined in paragraph (D)(2) of this rule.
- (b) Providing assistance to early childhood personnel in the provision of developmentally and exceptionality appropriate practices for preschool children who are eligible for special education services;
- (c) Ensuring compliance with licensing requirements pursuant to section 3301.58 of the Revised Code;
- (d) Facilitating the provision of comprehensive early childhood delivery systems for young children with disabilities including the integration of education, health, social services, and parent education components.
- (e) Participating in the development and evaluation of professional development plans and induction programs that apply to early childhood personnel pursuant to rule 3301-24-06 of the Administrative Code and section 3319.223 of the Revised Code;
- (f) Participating in the "Step Up to Quality" program established pursuant to section 5104.29 of the Revised Code and maintaining a status of three-, four-, or five-stars;
- (g) Assisting with the implementation and evaluation of state standards that apply to early childhood programs;
- (h) Collaborating with early childhood providers including "Head Start" programs, "Part C Early Intervention" providers, county boards of developmental disabilities, local family and children first councils, community childcare programs, and community preschools to ensure continuity of care for dual enrolled children and the availability of a full "Least Restrictive Environment" continuum;
- (i) Collaborating with the regional state support team in the provision of training and technical assistance responsive to the needs of preschool special education staff; and
- (j) Collaborating with the Ohio department of education, office of early learning and school readiness, as appropriate.

(9) Service provider workload determination for delivery of services.

In addition to caseload requirements, school districts must consider the overall workload of each staff member in accordance with rule 3301-51-09 and the licensing ratio requirements for preschool programs defined in rule 3301-37-04 of the Administrative Code.

- (a) A full-time early childhood intervention specialist shall be provided when there are eight full-day or sixteen half-day children served on IEPs enrolled in a public school preschool special education class.

\*\*\*DRAFT – NOT FOR FILING\*\*\*

- (b) An intervention specialist classroom teacher responsible for eight or more half-day class sessions (e.g., four morning and four afternoon sessions per week), or four full-day class sessions shall not carry an additional itinerant caseload;
  - (c) An intervention specialist classroom teacher responsible for up to five half-day class sessions (e.g., five morning sessions per week) or up to three full-day class sessions, may serve up to eight additional children on an itinerant caseload;
  - (d) An intervention specialist classroom teacher responsible for six or seven half-day class sessions (e.g., three morning and four afternoon sessions per week), may serve up to four additional children on an itinerant caseload;
  - (e) An itinerant intervention specialist at one FTE shall serve no more than twenty eligible preschool children; and
  - (f) A preschool attendant at one FTE shall have a caseload of no more than three eligible preschool children.
  - (g) The department may grant a waiver (on a case-by-case basis) to the itinerant caseload requirements in paragraphs (J)(9)(c) to (J)(9)(e) in this rule for an intervention specialist to serve additional children with disabilities.
  - (h) Staff serving preschool and school age children with disabilities will have FTE apportioned on the basis of the number of children served in each age category and the percentages totaling one hundred percent.
- (K) Transportation of children with disabilities. Rule 3301-51-10 of the Administrative Code applies to preschool special education. Transportation shall be listed as a related service on a preschooler's IEP if the IEP team determines that transportation is required for the child to access FAPE and benefit from special education.