

September 1, 2016

TO: Common Sense Initiative
Ohio Department of Education

FROM: Stakeholder Team*

RE: Sponsor Rule Change – Sponsor Evaluation System

Thank you for the opportunity for stakeholders to provide additional input and recommendations on the standards for measuring the Sponsor Compliance portion of the Sponsor Evaluation System (SES) as part of the proposed changes to Ohio Administrative Code (OAC) Rule 3301-102-08. The Stakeholder Team consists of a diverse group of sponsoring organizations (including districts and nonprofit sponsors) and a charter school advocacy organization. Please see page six for the complete list.

We want to emphasize two key points to all interested parties reviewing this document: (1) we want and welcome a SES in Ohio; and, (2) we want final ratings to be released by the Ohio Department of Education (ODE) by the statutory deadline of October 15, 2016. All the members of this Stakeholder Team have been involved in the development of the SES since 2012. We know the purpose for which the SES was developed, and we also understand the issues that have led to implementation concerns plaguing the system today. These issues are amendable, however, and we believe the recommendations we propose here will help ODE release the sponsor ratings this year.”

The purpose of this document is threefold. First, we want to provide you with brief background information regarding the evaluation. Second, we offer recommendations and concrete action steps that will enable ODE to release credible and defensible sponsor ratings this October and in years henceforth. Finally, we offer a proposed annual compliance review timeline that promotes transparency and fairness.

We believe that this information will assist ODE in meeting its obligations, and provide accurate and credible compliance ratings for sponsors in Ohio. Additionally, we strongly do not want this review to be delayed: ratings can and should be released in October. We are available to assist ODE, legislators, the State Board of Education, Common Sense Initiative (CSI), and the Joint Committee on Agency Rule Review (JCARR) to make this happen.

BACKGROUND

The Stakeholder Team previously worked in partnership with the Ohio Department of Education and the National Association of Charter School Authorizers (NACSA) to draft the Sponsor Evaluation System [formerly the Sponsor Performance Review (SPR)] beginning in 2012. Between 2012 and 2014, the Compliance Monitoring portion of the review was fully vetted and piloted with all Ohio sponsors via a process that included ODE, expert sponsor peer reviewers, NACSA representatives, and onsite visits to schools to verify the information provided to ODE by sponsors. The 2015-16 compliance monitoring list – which contains 319 laws and rules - was developed after recommendations were made by a panel that

did not include anyone with sponsorship experience. And, as you are likely aware, ODE's implementation of the compliance monitoring evaluation has been rocky at best.

Specific problems with the implementation of the monitoring protocol, as currently structured, include:

ODE asked for "certification" – an arduous process wherein sponsors were required to fill out forms indicating whether the sponsor complied with a rule or law, regardless of whether the law or rule was applicable to the sponsor,– despite that . ODE we agreed to do the same via the contract with each charter school governing authority. ODE is paying contractors to check the memos; certainly there has to be a better process and is a better use of taxpayer dollars. Further, certification doesn't provide any verification that the law was complied with which was the reason for the new evaluation.

The 2015-16 compliance item list that was distributed by ODE for 2015-16 also contained some items that were, in fact, not required by law or rule, and included items required by law but not in the manner ODE asked for them. The 2015-16 compliance list included items that ODE already had in its possession - or that were public documents - and that were capable of verification via ODE's own systems or the systems of other public entities (e.g., Auditor of State website)

The reliability of the information submitted during the compliance check is undermined because ODE provided insufficient notice, time, and training for sponsors to adequately submit the documentation. Within the stakeholder group alone we experienced no response to questions or inconsistent responses. Worse, the compliance portion was supposed to occur in the spring of 2016, when many of us had planned and were prepared. Instead, we were given no indication the review would take place in July until June 24, and ODE was unable to provide any training until after the clock had started running on the submission deadline.

Finally, and as you know from the hearing on August 22, 2016, ODE is attempting to retroactively apply a new process for a school year that had already ended with a list of items that related to a rule that had not been fully approved. We are not confident that is even legal and, at a minimum, sends a signal that state departments can develop and enforce any rule they see fit, at any time they see fit. Imagine if the Department of Taxation had the authority to retroactively enforce tax laws: a scary precedent, to be sure.

We have included in our Recommended Action Steps (below) a detailed plan for implementing a revised 2015-16 compliance monitoring evaluation, which includes our analysis of all 319 compliance items in ODE's original compliance monitoring list. Of the items on the 2015-16 compliance list, our analysis finds that:

- 8 percent is information publicly available from other sources
- 5 percent is not required by law
- 4 percent is confusingly phrased, and asks sponsors to "affirm the negative" (which consequently raises questions about the validity of the results)
- 24 percent is information already in the possession of ODE
- 12 percent is in the sponsorship contracts between sponsors and community schools
- 1 percent should be in the Quality Review portion of the sponsor evaluation

To summarize, ODE's execution of the 2015-16 compliance monitoring evaluation was not transparent, responsive or easy, and inexpensive to apply. The only thing the 2015-16 compliance protocol assesses, frankly, is how well a sponsor can check boxes, not how well a sponsor actually does its work. Unfortunately, the 2016-17 compliance list, as issued by ODE, contains the same amount of items and the same amount of errors. Toward that end, we respectfully offer the following recommendations to improve the process for 2015-16 and beyond.

RECOMMENDATIONS

In light of the breadth of implementation problems with the 2015-16 compliance monitoring evaluation, as well as the rapidly approaching October statutory deadline for ODE, we recommend for the 2015-16 compliance monitoring evaluation and beyond:

1. ODE revise its list of required items to exclude those that are not required by law; those that were phrased confusingly and ask sponsors to 'affirm the negative'; and items that are better suited for inclusion in the Quality Review portion of the sponsor evaluation. This would remove 31 items (approximately 10 percent). Please see below for our analysis in this regard.
2. ODE include all items that it can verify using information already in ODE's possession or that is publicly available from other state agencies; items included in the sponsorship contracts that sponsors have with each school; and all items related to student health, safety and welfare. This would include 289 items (approximately 90 percent). These items would comprise the compliance monitoring evaluation. Allowing sponsors to collect verification items weakens the validity of the evaluation by introducing the possibility of falsification of documents.
3. ODE evaluates a random 10 percent of these items across a portion of each sponsor's portfolio, using the same scoring system that it is currently using for the Quality Review portion of the sponsor evaluation. Please see below for additional details. Ten (10) percent is the exact same percentage which ODE currently verifies. Due to the short timeframe and lack of guidance provided with the 2015-2016 process, we would respectfully request that ODE inform all sponsors of the items chosen and provide us seven (7) business days to review the submissions previously made for these items.

RECOMMENDED ACTION STEPS

STEP 1: Revise the 2015-16 compliance list so that it only includes items required by rule and law and so that it minimizes administrative burden. The Stakeholder Team has reviewed the current (2015-16) list and placed all 319 items in seven (7) categories, as follows.

1. ODE can confirm compliance through a public system and does not require any response or documentation from the sponsor or the school.
Example: item #57 Ohio Revised Code (RC) section 3314.03(C) (payments to the sponsor for oversight and monitoring must not exceed 3%).
ODE can confirm this in two ways: (1). Look at the charter agreement on file with ODE to ensure the language in the contract complies with this statute and (2). Review the Auditor of State final audit report for each school -- available to the public on the Auditor of State website

-- to verify the actual dollars paid to the sponsor by the school.

2. Items not required by law.

Example: item #109 RC section 3314.028, 3314.06 (requiring a policy regarding identification of gifted students)

Item 109 from ODE's list asked sponsors to submit the gifted identification policy for each school and cited R.C 3314.028 and R.C. 3314.06 as legal citations. Neither of those sections cited, however, mention gifted identification policies. Furthermore, ODE's own "Facts for Parents" sheet acknowledges that community schools are not required to identify gifted students. See [http://education.ohio.gov/getattachment/Topics/Other-Resources/Gifted-Education-\(1\)/Resources-for-Parents/Gifted-Education-Fact-Sheet/Parent-Factsheet.pdf.aspx](http://education.ohio.gov/getattachment/Topics/Other-Resources/Gifted-Education-(1)/Resources-for-Parents/Gifted-Education-Fact-Sheet/Parent-Factsheet.pdf.aspx)

3. Items that cause confusion by affirming the negative.

Example: item #5: RC section 3314.401 (the school maintained reports of its investigations into the conditions described in RC section 3314.40(B) in the employee's personnel file).

ODE is requiring sponsors to "certify" the school did in fact maintain such reports. We are unclear whether this means that sponsors confirm the negative with a "no" because the school did not have an instance that required it to maintain the reports; therefore, the school did not have any reports in the employee's personnel file. Or, whether sponsors indicate with "yes", they are compliant, because there is no evidence of non-compliance because the school did not have any instance that required them to maintain a report.

4. ODE already has possession of evidence, due to its role as the state education agency, to determine compliance.

Example: item #2 RC section 3314.50 (the school posts a bond, guarantee or cash deposit in an amount of fifty thousand dollars with the auditor of state).

First, ODE requires this document and confirmation to be uploaded into ODE's own document management system, Epicenter, as part of each new school's opening documents. ODE clearly already has a copy in their possession and should not require sponsors to upload it again for this purpose. Second, ODE's language for the item is misleading as this only applies to "new" schools.

5. Items already included in the sponsor contract (charter).

Example: item #62: RC section 3314.02(B) (the school's contract term does not exceed five years, or end beyond the term of the sponsor's agreement with ODE).

As noted above, ODE has copies of community school contracts and in fact completes its own legal sufficiency review of all new charter contracts.

6. Item should be in the Quality Review component of the sponsor evaluation, not the compliance protocol.

Example: item #85 RC section 3314.01 The community school was not previously established as a private school.

This item is better suited for inclusion in the Quality Practices Review component.

7. Items that are critical and should remain on the list annually. For example, health and safety items.

STEP 2: Revise the protocol and process so as to better promote transparency and fairness.

Remove all items on the list that are category 2 (not required by law), category 3 (affirming the negative), and category 6 (should be kept in the evaluation but included in the Quality Review portion).

Include all items in categories 1 (information accessible from other sources), 4 (items ODE already has in its possession), 5 (items verifiable using the sponsor contracts), and 7 (critical items such as health and safety). This list would represent the “bank” of items from which ODE would monitor compliance.

ODE will randomly choose 10 percent from the remaining Category 1, 4, 5, and 7 items on annual basis for Compliance Monitoring review purposes.** This is a non-statistical sampling. There is no statistical basis for a 100 percent examination of items (we’d also add that this isn’t typical practice for an audit and of course adds needless expense to the process), and the items are the same across all sponsors.

ODE will randomly choose a sponsor’s schools for annual verification of the compliance items identified in STEP 2 and 3 above based upon the scale below.**

Number of Schools Sponsored	Number of Schools for Annual Verification by Sponsor
1	1
2 → 10	2
11 → 25	3
26 → 49	4
50 +	5

We further recommend that all random selections completed by ODE in relation to any component of the Sponsor Evaluation System be conducted in a public forum. Indeed, we recommend making the selection of compliance items and the selection of each sponsor’s schools open to the public.

STEP 3: Revise the scoring to align with the Quality Review

In the interest of having a consistent scoring system across the Sponsor Evaluation, we recommend that the scoring table below – which is the same as that currently used for the Quality Review – be implemented for the compliance review rating.***

Exemplary	90% – 100%	4 points
Effective	80%-89.9%	3 points
Progressing	70%-79.9%	2 points
Ineffective	60%-69.9%	1 point
Poor	59.9% or below	0 points

***Designated Health and Safety compliance items would be weighted double in the final calculation.

ANNUAL COMPLIANCE REVIEW TIMELINE

To address the lack of transparency regarding the sponsor evaluation, as well as all of the delays and communication problems attributable to ODE that occurred with the sponsor evaluation's implementation, we recommend the following annual timeline.

July 1 – ODE releases the complete list of all compliance items subject to review for the current school year (i.e., the school year July 1 – June 30)

October 1 - Updates due to legislative changes will be made to the list and sent out with those changes clearly identified and communicated to sponsors.

May 1 – ODE conducts a random selection of compliance items and verification schools for each sponsor. The selection process is open to the public.

May 1 through June 30 – ODE opens its document management system, Epicenter, for sponsors to submit documents and/or certification for selected compliance items for corresponding verification schools. ODE will be responsible for ensuring only those applicable items will be listed in each sponsor's Epicenter account. During the 2015-16 compliance review, sponsors had to certify items for programs ODE knows the sponsors don't have (i.e., e-schools, career tech, to name two). This was absolutely unnecessary and again a waste of time and tax dollars.

July 1- August 30 – ODE completes review of compliance items from the previous year.

September 1 – ODE issues a "draft" to sponsors of their sponsor evaluation and corresponding rating/score.

September 1 – September 15 – Sponsors can appeal any portion of the draft evaluation to the State Superintendent.

September 15 – September 30 – ODE reviews appeals and notifies sponsors of its decisions thereon..

October 1 – October 15 – ODE releases final Sponsor Evaluation System ratings.

CONCLUSION

As stated above, we fully support being evaluated and we welcome the opportunity to improve our practice. We also believe that it is critical that the sponsor evaluation remain on track and meet the October deadline for the release of ratings. However, we also believe that for those ratings to be credible and defensible, a thorough review of the compliance monitoring tool and process must occur, and changes must be made to strengthen the overall evaluation. As you are aware, this is an area where Ohio must lead. Thank you for the opportunity to provide input.

*The Stakeholder Team

Dave Cash, St. Aloysius
dcash@charterschoolspec.com

Beth Lear, Ohio Coalition for Quality Education
bethlear@hotmail.com

Stephanie Klupinski, Cleveland Metropolitan School District (formerly of the Ohio Alliance for Public Charter Schools)

Stephanie.klupinski@clevelandmetroschools.org

Jennifer L. Robison, Buckeye Community Hope Foundation and Ohio Association of Charter School Authorizers (OACSA)

jrobison@buckeyehope.org

Ted Frissora, Reynoldsburg City Schools

tfrissora@reyn.org

Kathryn Mullen Upton, Thomas B. Fordham Foundation

kmullenupton@edexcellence.net

Please note: each sponsor, non-profit community school, and other key stakeholders are responsible for providing their own business impact information to CSI separately from this stakeholder team.

cc: Tom Gunlock, President, State Board of Education
Paolo DeMaria, Superintendent of Public Instruction, Ohio Department of Education
Diane Lease, Chief Legal Counsel, Ohio Department of Education
Colleen Grady, Senior Policy Advisor, Ohio Department of Education
Senator Joe Uecker
Representative Mike Duffey
Larry Wolpert, Executive Director, Joint Committee on Agency Rule Review
Mark Hamlin, Common Sense Initiative
Emily Kaylor, Common Sense Initiative