

ADVOCACY CORNER

THE LONG-AWAITED GIFTED RULE, 2024!

By Abbie Sigmon, Executive Director

Before I outline the content of the new Gifted Rule, I hope to clarify some of the differences between the Gifted Rule and the Gifted Law. Please note that as of publication, the Joint Committee on Agency Review (JCARR) has not approved the final language of the Gifted Rule. When the rule has final approval, the OAGC will send out an advocacy alert.

	The Gifted Law	The Gifted Rule
Location	Ohio Revised Code	Ohio Administrative Code
Explanation	Identifies how gifted students are identified and how they may be served.	Outlines the specifics that must be followed in gifted identification. Identifies how districts may serve gifted students and how state-funded gifted units may be utilized.
Website	https://codes.ohio.gov/ohio-revised-code	https://codes.ohio.gov/ohio-administrative-code/rule-3301-51-15

The Gifted Rule—the document that outlines specifics in gifted identification and in how districts may best serve and utilize gifted funds—went through a complete revision this year, in large part due to the changeover from the Ohio Department of Education (ODE) to the Ohio Department of Education and Workforce (ODEW). For context, during the last budget season, SB 1 was incorporated into the Operations Budget Bill (HB 33). SB 1 eliminated the Ohio Department of Education and created the Ohio Department of Education and Workforce—a cabinet-level department under the office of Governor Mike DeWine. SB 1 also removed many of the powers of the State Board of Education and transferred them to the ODEW. Governor DeWine appointed Steve Dackin as the new director of the ODEW. The authors and supporters of this bill cited a “lack of accountability and transparency” in the state’s Education Department as the need for this bill. It was their hope that the executive branch would oversee and direct the newly

created ODEW. Creation of the ODEW provided the occasion to revise educational rules. Among the long list of rule revisions was the Gifted Rule (OAC 3301-51-15). On December 1, 2023, the OAGC was notified that the Gifted Rule was up for revision with an expedited timeline. (Previous drafts had been in process since 2021.) Initial public comments were due on December 22, 2023—fewer than three weeks later.

After reviewing public comments, the ODEW released the draft of the Gifted Rule on January 12, 2024. Public comments on that draft were due by February 11, 2024. Initial guidance from the ODEW stated that the public would receive the final draft of the Gifted Rule by late February, but we did not receive this document until April 22, 2024.

After a Chapter 119 hearing at the ODEW office, the Gifted Rule was filed with JCARR, a committee of five state representatives and five state senators, the main function of which is to ensure that new rules do not exceed an agency’s rulemaking authority. JCARR does not write or edit legislation; instead, JCARR looks at eight prongs to determine whether any of them may invalidate all or part of a proposed rule.

With the removal of the power of the State Board of Education, JCARR is one of the last bastions of accountability during the rule review process.

One of the prongs that JCARR will use is whether the rule conflicts with the “legislative intent under the statute of which it is proposed.” This means that the Gifted Rule must be rational and in agreement with the law.

Major Changes in the Gifted Rule

Throughout the revised Gifted Rule, clarifying language that references the Gifted Law (ORC) has been removed. Duplicative language (language found in both the Gifted Rule and the Gifted Law) must be removed from the Gifted Rule pursuant to Ohio Revised Code section 106.03. While not ideal, this change was not something that the OAGC could argue against. Instead, we hope that guidance documents from the ODEW will aid in cross-referencing between the rule and law.

[Removal of creative thinking screening: Section B\(5\) \(draft\)](#)

Creative thinking screening has been removed in response to public comments. Although districts are still obligated to screen for creative thinking if they receive referrals, the OAGC opposed the removal of

this section because fewer underrepresented students will be identified. There is the potential for report card impacts, as districts could see a drop in their input points for identification if they stop screening for creative thinking.

[Cluster Grouping language: Section C\(4\)\(d\) and \(e\)](#)

The second draft of the Gifted Rule included language around cluster grouping but no limitations on the sizes of clusters or identifications. The OAGC requested that the ODEW include language about cluster group minimums and maximums and to require that cluster groups consist of students with similar gifted identifications. The current language states that cluster group sizes in a setting that includes coteaching with a gifted intervention specialist must have “a minimum of three students and maximum of twenty students who are identified as gifted.” Additionally, cluster groups currently are limited to settings “where the students’ gifted identification areas are similarly related.”

The OAGC is still concerned with language surrounding districts’ ability to apply for temporary waivers related to cluster groupings. There are guidelines for these waivers, and we are still unaware of the process for their approval.

[Written Education Plans: Section C\(5\)\(a\)\(iii\)](#)

Previous drafts of this rule stated that districts are required to “meet with the parent and obtain the parent or guardian signature on the WEP.” While the OAGC agrees that parents and guardians should be consulted in writing of WEPs, the language in previous versions of the rule required a GIS to meet with the parent or guardian of each identified gifted student. This requirement was extraneous and could equal weeks and weeks of nonstop parent and guardian meetings—instead of simply providing gifted services. The OAGC recommended to the ODEW that the final draft of the rule include language specifying what a “reasonable attempt” at communication would be. Final Gifted Rule language for this section is as follows: “The district will make a reasonable attempt at the commencement of services and each year thereafter to *obtain parent input* on the WEP and the parent’s signature on the WEP.”

[Student Talent Development: Section D](#)

Perhaps the most contentious section in the entire rule, the inclusion of student talent development, was of great concern to the OAGC. “Talent development” means classes and supports for students not identified as gifted. The OAGC strongly supports the practice of

talent development. However, this section has not been in any previous iterations of the Gifted Rule and has the potential to erode services for gifted students across the state. Talent development must happen with input from gifted staff; however, talent development classes should not detract from gifted student education. *Gifted staff being paid with gifted funds should be serving gifted students.*

Readers may remember the changes to gifted funding accountability in the Ohio Revised Code during the last budget season. Language was changed to ensure that districts could spend gifted funding that they received only on the identification of gifted students, gifted coordinator services, gifted intervention specialist services, and gifted professional development. The OAGC successfully lobbied to remove “other ODE-approved service providers” from the list of gifted funding divisions.

The OAGC argued that inclusion of this section goes against the legislative intent of the Gifted Law (ORC 3324). Many members of JCARR agreed and encouraged the ODEW to remove this section to comply with the Ohio Revised Code. On June 25, 2024, the Gifted Rule was refiled with JCARR with the entire talent development section removed. The OAGC sees this as a big win for gifted students across the state.

[No-Service Letters: Section E\(2\) \(draft\)](#)

This section was included in the previous Gifted Rule and was removed in response to public comments indicating that these letters were “overly burdensome” to staff and “not beneficial to the field.” The OAGC firmly supports the inclusion of no-service letters, despite public comment to the contrary. The removal of no-service letters is antifamily and removes an important lever of family advocacy for gifted children. The OAGC has lobbied for the ODEW to include no-service letters in the rule, but the final draft does not include this language.

[Ongoing Professional Development for General Education Teachers: Section F\(b\)\(iv\)](#)

The Gifted Rule draft released in January included language that would require general education teachers who are designated as providers of gifted services to have a minimum of five clock hours of ongoing specialized training in gifted education each year. The OAGC (in conjunction with the Ohio Education Association) was in support of this language and urged the ODEW to retain this requirement in the final rule.

Unfortunately, citing public comments, the ODEW has removed this language from the final rule. There are no ongoing professional development requirements for general education teachers who provide gifted services.

[Gifted Advisory Council: Section G](#)

The OAGC has encouraged the ODEW to include language from the GAC bylaws in the Gifted Rule. The OAGC wants to see language that clearly states the permanent membership of the OAGC's executive director and another OAGC appointee. We also encouraged the ODEW to require that one representative from each OAGC coordinator affiliate group be included on the GAC to ensure that those on the council are currently serving gifted students. However, the ODEW has stated that it would like these changes to take place in a review and rewrite of the GAC bylaws, which was expected to take place in summer 2024.

[Accountability: Section G \(draft\)](#)

Citing duplicative language and referring to ORC section 3324.06, the entire section outlining accountability was removed for the final Gifted Rule. While districts must always refer to the Gifted Law, the removal of this section (duplicative or not) causes concern. Previous drafts included a corrective plan following audits that the OAGC supports. The ODEW has assured the OAGC that these will still take place pursuant to the ORC, but again, removing this section is unnecessary and causes grave concern.

The 2024 Gifted Rule is slated for a five-year revision cycle in 2029. The OAGC will focus on advocating for gifted children, their families and guardians, and those that serve them. It is our hope that the changes we lobbied for will make Ohio a better place for gifted children, and the OAGC will continue to advocate on their behalf. As we head into another budget season in 2025, the OAGC will also continue the fight for better gifted identification and service practices in our state.

Gifted Advisory Council

The GAC held its final meeting of the 2023–2024 school year in late April. The three workgroups—equitable identification practices, job-embedded professional development, and highly effective student supports and services—turned in their recommendations for a state gifted plan. The legal and communications team from the ODEW will review the recommendations, and we expect to see the gifted state plan in fall 2024. This plan will be used to help inform districts, gifted

educators, and policy makers on best practices for gifted education. When it is released, we will share that information with all members of the OAGC.

Other Statehouse Happenings

The OAGC is also keeping an eye on SB 104 (Regarding the College Credit Plus Program). Not much movement has happened with this bill since fall 2023, but the OAGC is advocating that students have more than one opportunity in a school year to enroll in College Credit Plus (CCP) programs. Currently, students must enroll in CCP courses before the April 1 deadline.

To keep abreast of all advocacy news, please check the OAGC Web site frequently for new policy and advocacy items:

<https://oagc.com/advocacy/advocacy-alerts/>

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