

Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)

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REQUEST FOR RULEMAKING (RFR)

1. Department:

Education

2. Bureau:

Superintendent of Public Instruction

3. Promulgation type:

MCL 24.244 (1)

4. Title of proposed rule set:

Special Education Programs and Services

5. Rule numbers or rule set range of numbers:

R 340.1701 to R 340.1851

6. Estimated time frame:

3 months

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

The general purposes of these amendments are to align the rules with federal requirements of the Individuals with Disabilities Education Act and its implementing regulations, to align the rules with Governor Whitmer's Executive Order No. 2019-06, and to remove unnecessary burdens on parents and other complainants. Other purposes of the amendments are to delete incorrect and obsolete language, to update contact information, to add clarity, to expand electronic submission options, to eliminate duplication, to correct grammatical errors, and to align with Legislative Service Bureau (LSB) standards of drafting (including statutory and regulatory citation format and rules of grammar). The specific proposed changes (in addition to grammatical and other minor changes) are:

R 340.1701 Assurance of compliance.
Information is updated.

R 340.1701a Definitions; A to E.

The definition of "electronic submission" is added in light of the amendment of R 340.1724f and R 340.1851 to allow all means of electronic submission of due process complaints and state complaints.

R 340.1721e Individualized education program.

In subrule (7), the requirement of parental request in order for a representative of the resident district to be invited to the individualized education program (IEP) team meeting is replaced with a requirement that the operating district invite such a representative to the meeting. This removes an undue burden from parents and aligns the rule with federal law in that:

- 1) Under 34 CFR 300.101(a) (2019), local education agencies are responsible for providing a free and appropriate education (FAPE) to all students with disabilities.
- 2) As required by 34 CFR 300.115(a) (2019), public agencies are responsible for ensuring a continuum of alternative placements for children with disabilities.
- 3) As required by 34 CFR 300.116(b) (2019), a public agency is responsible for ensuring annual determination that a student's placement is based on the student's IEP and is as close as possible to the student's home.

R 340.1724f Due process complaints; procedures.

Subrule (1) is deleted as obsolete and subrule (2) is deleted as duplicative.

Subrule (3) is revised as follows:

- 1) The incorrect reference to a complainant's "initiation" of a due process hearing is deleted and the 2 requirements for requesting a hearing are clearly stated.
- 2) The means of delivery are expanded to include all methods of electronic submission, thus easing the burden on complainants and aligning with standard practice.
- 3) Subdivision (c) is deleted to align with 34 CFR 300.508(d)(2) (2019), which imposes the duty to determine the sufficiency of a due process complaint on the administrative law judge. The Department of Education's Office of Special Education has no authority to determine such sufficiency.
- 4) Subdivision (d) is deleted because the means of delivery of a due process complaint to the will be stated elsewhere in the rule and requiring a statement of delivery is at odds with 34 CFR 300.508 (2019), which requires no such statement.
- 5) Subrule (4) is deleted as duplicative and unnecessary because its subject matter is adequately covered in 34 CFR 300.508 (2019). The ALJ determines whether a due process complaint meets the requirements of the rules and 34 CFR 300.508 (2019) and therefore also determines, in conformance with federal regulations, when timelines begin.
- 6) Subrule (6) is revised to reflect the fact that, under 34 CFR 300.508(d) (2019), it is the administrative law judge, not the Michigan Department of Education, who has the authority to determine whether a due process complaint is sufficient. The obsolete reference to "R 340.1833 to R 340.1885," which were rescinded in 2015 and became Part 18 of MOAHR rules in 2015, is deleted.

R 340.1724h Administrative law judge training.

There are several minor changes.

R 340.1725e Hearing officer or state reviewing official; duties and authority.

Subrule 4 is added for clarity and alignment with legal requirements and current practice.

R 340.1836 Objections to plan; procedures.

There are several minor changes.

R 340.1851 Filing a state complaint.

The allowable means of delivery of a state complaint are expanded to include all methods of electronic submission, and the language is amended to align with the description of the means of delivery in R 340.1724f(1)(a).

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

The superintendent of public instruction has specific rule promulgation authority under sections 1701 and 1703 of the Revised School Code, 1976 PA 451, MCL 380.1701 and 380.1703, and Executive Reorganization Order No. 1996-6, MCL 388.993.

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

MCL 380.1701

MCL 380.1703

Executive Reorganization Order No. 1996-6, MCL 388.993

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

The rules are mandated by MCL 380.1701 and 380.1703.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

As currently worded, R 340.1721e conflicts with federal law in that it improperly places on parents the responsibility to invite the resident district to an IEP team meeting. That responsibility resides with the public agency, as indicated in federal regulations.

- Under 34 CFR 300.101(a) (2019), local education agencies are responsible for providing a free and appropriate education (FAPE) to all students with disabilities.
- As required by 34 CFR 300.115(a) (2019), as part of providing a FAPE, it is the responsibility of every public agency to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- As required by 34 CFR 300.116(b) (2019), it is the responsibility of the public agency to ensure that a student's placement is determined at least annually, is based on the student's IEP, and is as close as possible to the student's home.

In addition, as currently worded, R 340.1724f exceeds the requirements of 34 CFR 300.508 (2019) by requiring that a complainant submit a statement of delivery. This rule also currently conflicts with federal law by imposing on the Department of Education the authority and responsibility to determine the sufficiency of a due process complaint. 34 CFR 300.508(d) (2019) and 34 CFR 300.513 (2019) give administrative law judges the authority to determine the sufficiency of such complaints and to determine jurisdiction over issues raised in them.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

The subject matter of R 340.1721e (individualized education program) is addressed in documents on the Department of Education website at:

https://www.michigan.gov/mde/0,4615,7-140-6598_88186_88204---,00.html

The subject matter of R 340.1724f (due process complaints) is contained in the Department of Education's Special Education Due Process Complaint Procedures document, which includes a Model Due Process Complaint/Request for Hearing. The document is located on the Department of Education website at:

https://www.michigan.gov/documents/mde/DueProcess_Complaint_Procedures_340126_7.pdf

Intermediate school district special education plans (addressed in R 340.1836) are the subject matter of documents on the Department of Education website at:

https://www.michigan.gov/mde/0,4615,7-140-6598_88190_88212---,00.html

State complaints (addressed in R 340.1851) are the subject matter of documents on the Department of Education website at:

https://www.michigan.gov/documents/mde/StateComplaintForm_550398_7.pdf

https://www.michigan.gov/documents/mde/StateComplaint_Investigation_Process_578616_7.pdf

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

Yes, the rules are listed on the department's annual regulatory plan as rules to be processed for the current year.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

MCL 24.244 (1)

A. Explain why the rules are being promulgated under 24.244.

The rules will be promulgated under section 44(1) of the Administrative Procedures Act, MCL 24.244, because the proposed amendments align the rules with federal law and with Executive Order No. 2019-06 and accomplish the non-substantive purposes of updating contact information, deleting obsolete language, eliminating duplication and inconsistent terminology, correcting grammatical errors, and aligning with Legislative Service Bureau standards of drafting. The proposed amendments also expand electronic submission options, thus aligning with current standard practice and decreasing the burden on complainants.