

**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:**

Full Process

**4. Title of proposed rule set:**

Special Education Programs and Services

**5. Rule numbers or rule set range of numbers:**

R 340.1708 and R 340.1721e

**6. Estimated time frame:**

6 months

**Name of person filling out RFR:**

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

R 340.1708

On May 22, 2017, the United States Department of Education Office of Special Education and Rehabilitative Services (USDOE/OSERS) issued a memorandum entitled “Eligibility Determination for Children Suspected of Having a Visual Impairment Including Blindness under the Individuals with Disabilities Education Act.” Subsequently, the USDOE/OSERS requested the Michigan Department of Education (MDE) to review its criteria for determining if a child has a visual impairment to ensure that the criteria are not narrower than allowed under the Individuals with Disabilities Education Act (IDEA), 20 USC 1400 et seq., and its implementing regulations. After review, the MDE determined that R 340.1708 is more restrictive than allowed by federal law, necessitating amendment of the rule. Beginning in the fall of 2019, MDE shared the proposed amendment with multiple stakeholders, including the Michigan Association of Administrators of Special Education, the Special Education Advisory Committee, and intermediate school district special education directors. These stakeholders were given information about why amendments were being proposed. Additionally, they were able to provide any insight they may have about the effects of the proposal. The stakeholders supported the amendment of this rule.

Another purpose of the proposed rule is to broaden the circumstances under which a certified orientation and mobility specialist shall conduct an evaluation.

R 340.1721e

R 340.1721e(7) was amended effective February 13, 2020. The intent of the amendment was to remove the burden of inviting the resident district from the parent and to place the burden on the operating district. Instead, the February 13 amendment mistakenly placed an unnecessary burden on the resident district by requiring its attendance. The proposed amendment returns the language to what was intended.

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

The superintendent of public instruction has specific promulgation authority.

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

The superintendent of public instruction has promulgation authority for these rules under sections 1701 and 1703 of the revised school code, 1976 PA 451, MCL 380.1701 and 380.1703, and Executive Reorganization Order No. 1996-7, MCL 388.994.

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

MCL 380.1701 and 380.1703 mandate rules related to special education programs and services.

**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.**

R 340.1708

The May 22, 2017 memorandum of the USDOE/OSERS described in #7, above, advised that, although the IDEA allows states to establish eligibility standards for special education and related services and although the IDEA does not require states to use the IDEA's precise definitions of disability terms, states shall not establish standards that are narrower than those set forth in IDEA definitions.

Under 34 CFR 300.8(c)(13), visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. As described in the May 22, 2017 memorandum, the term includes any impairment in vision, regardless of severity, that, even with correction, adversely affects a child's educational performance (e.g., the child's ability to read and write).

The MDE has determined that R 340.1708 sets forth a definition of visual impairment that is more restrictive than the definition set forth in 34 CFR 300.8(c)(13).

R 340.1721e

Under 34 CFR 300.321(e), when the resident district is invited to the IEP team meeting of a student placed outside of the resident district, the parent of the student and the school district can agree, in writing, that the resident district is not required to attend the IEP team meeting in cases where placement in the resident district might not be a consideration. Under 34 CFR 300.321(e), a member of the IEP team is not required to attend an IEP team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. The excusal of an IEP team member was addressed by the USDOE/OSERS in the Federal Register as follows:

"Under section 614(d)(1)(C) of the [IDEA], a State must allow a parent and an LEA to agree to excuse a member of the IEP Team. Section 300.321(e) reflects this requirement and we do not have the authority to make this optional for States. We also do not have the authority to allow a State to restrict, or otherwise determine, when an IEP Team member can be excused from attending a meeting, or to prohibit the excusal of an IEP Team member when the LEA and parent agree to the excusal. Whether a State must have policies and procedures to excuse IEP Team members from attending an IEP Team meeting will depend on whether such policies and procedures are required by a State to implement this statutory requirement. However, every State must allow a parent and an LEA to agree to excuse an IEP Team member from attending an IEP Team meeting." 71 Fed Reg 46673 (August 14, 2006)

The requirement that the resident district attend rather than simply be invited to an IEP team meeting restricts the ability of the parent and the district to excuse the attendance of a member of the IEP team.

**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 the rules is not currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda.

**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 of Education'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?**

Full Process

**13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.**

The rules do not exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

**14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.**

R 340.1708 incorporates the recommendations of the United States Department of Education Office of Special Education and Rehabilitative Services and it reflects the input of multiple stakeholders, including the Michigan Association of Administrators of Special Education, the Special Education Advisory Committee, and intermediate school district special education directors. R 340.1721e incorporates recommendations received from stakeholders, including resident school districts, about the unnecessary and onerous requirement that resident school districts attend every individualized education plan team meeting described in the rule.

**15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.**

The rule set entitled Special Education Programs and Services is evaluated on a continual basis. R 340.1708 was last amended in 2010. R 340.1721e was last amended in February 2020. Neither technology, economic conditions, nor other factors have changed special education programs and services in a relevant manner since these rules were last amended.

**16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?**

There have been no changes or developments since implementation of these rules that demonstrate that there is no continued need for them or for any portion of them.

**17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.**

No