

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

MOAHR-Rules@michigan.gov

**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 - R 340.1873

**6. Estimated time frame:**

3 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 340.1746 addresses services for homebound and hospitalized students with disabilities. The State School Aid Act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896, sets forth the requirements for districts and intermediate districts to receive state aid based on pupil membership. Section 109 of the act, MCL 388.1709, addresses the membership of homebound and hospitalized pupils.

Promulgation of R 340.1746 preceded the effective date of the State School Aid Act and the rule does not align with MCL 388.1709 in several ways. For example, the rule allows any licensed physician, not just the pupil's attending physician as required by the statute, to provide the verification that triggers the obligation to provide homebound and hospitalized services; the rule imposes a 15-school-day timeline for homebound services that is not in the statute; the rule omits the statutory requirement related to an anticipated 5-school-day confinement at home or hospitalization; the rule does not address verification in the event of a pupil's hospitalization; the rule's requirement that hospitalized services be provided when "medically feasible" omits the statutory 3-school-day requirement of MCL 388.1709(2).

Subdivision (e) of the rule is unnecessary as its content is addressed in MCL 388.1709(1).

The disconnect between the rule and the statute has created confusion and has raised concerns among stakeholders about ensuring that homebound and hospitalized students with disabilities receive services as described in the statute and as required by the Individuals with Disabilities Education Act, 42 USC 1400 et seq.

**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 for this rule.

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

The superintendent of public instruction has promulgation authority for this rule 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.**

The rule currently is out of alignment with and, in some respects, duplicates section 109 of the State School Aid Act of 1979, 1979 PA 94, MCL 388.1709.

**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 rule is the obligation of a district or intermediate district to provide services to homebound and hospitalized students with disabilities. The requirements for counting homebound and hospitalized pupils in membership for purposes of state aid are contained in the Department of Education's 2021-2022 Pupil Accounting Manual. See 2021-22 Pupil Accounting Manual (michigan.gov). The requirements for such services are also set forth in the document that is mandated by MCL 388.1709(3). See Providing Homebound and Hospitalized Educational Services for Michigan Public School Pupils.

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

No, R 340.1746 is not listed on the Department of Education's 2021-2022 annual regulatory plan as a rule to be processed during 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 proposed rule will be promulgated under section 44(1) of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.244, because the amendments align the rule with MCL 388.1709 (including applicable definitions), which was enacted after promulgation of the rule. The amendments also align the rule with grammatical requirements of the Michigan Office of Administrative Hearings and Rules Manual of Style (June 2021 edition). A reference to the Individuals with Disabilities Education Act, 42 USC 1400 et seq, the federal act that controls special education and that was enacted after promulgation of the rule, is included to add clarity. Current subdivisions (b) and (e) of the rule are deleted as unnecessary because proposed subrule (1) incorporates MCL 388.1709, which includes the content found in those subdivisions.