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Senate Bill 1184 (as enrolled)  
Sponsor: Senator Wayne Kuipers  
Senate Committee: Education  
House Committee: Education

**PUBLIC ACT 186 of 2006**

Date Completed: 10-26-06

**RATIONALE**

Under the State's administrative rules, if there is a dispute regarding special education services provided to a child or other questions involving a district's special education program, then a parent, public agency, or the Department of Education may request a due process hearing to resolve the dispute. Until recently, the hearings were held according to a two-tier process: An initial hearing was held to decide the case, and a second hearing could be provided if the decision was appealed. Under those rules, the cost of the initial hearing was borne by the local school district, according to the Office of Special Education and Early Intervention Services (OSEEIS). The cost of any appeal, as well as the training of hearing officers, was borne by the OSEEIS.

On May 20, 2005, revised administrative rules, establishing a new process for hearings, were filed with the Secretary of State. Those rules created a single-tier review process, and required that the local school district pay 75% of the cost of any hearings, in order to maintain approximately the same cost-sharing structure that had existed under the previous rules. (Those rules were to take effect July 1, 2006, but were superseded by emergency rules filed with the Secretary of State on June 30, 2006. Please see **BACKGROUND** for further information.) It was suggested that the provisions regarding the payment of special education costs should be included in State statute rather than in the administrative rules, since the process requires the distribution of revenue from local districts to the Department of Education.

**CONTENT**

The bill amended the Revised School Code to specify that, beginning July 1, 2006, the board of a local school district or other public agency responsible for providing programs or services under the Code to a child with a disability is responsible for 75% of the costs of providing a due process hearing pursuant to R 340.1882 of the Michigan Administrative Code. The bill took effect on June 19, 2006.

(Rule 340.1882 allowed a parent, public agency, or the Department of Education to request an administrative hearing on matters related to identification, evaluation, educational placement, provision of a free appropriate public education, provision of appropriate services to the child or his or her family, assignment of financial obligations for those services, determination that behavior was not a manifestation of the student's ability, or determination of an interim alternative setting.

The rule required the district of residence or public school academy to reimburse the special education hearings unit for 75% of the costs related to providing the hearing. The rule also eliminated appeals within the system, instead permitting an aggrieved person to appeal a decision to a court of competent jurisdiction.

The rule was rescinded on July 3, 2006.)

MCL 380.1852

**BACKGROUND**

According to the Department of Education, Rules 340.1881 and 340.1882 were

rescinded because of questions and possible litigation over the new process. The basis of the threatened lawsuit was that the rules improperly delegated the Department of Education's duties to the Office of Administrative Hearings and Rules (SOAHR), which is responsible for conducting the hearings. Under the rules, a petition for a hearing had to be filed directly with SOAHR, rather than with the Department of Education. Federal law, however, requires the appropriate state educational agency or local educational agency to be notified of such complaints (20 USC 1415b). To avoid litigation and to resolve any concerns, temporary emergency rules were implemented on June 30, 2006. Under the emergency rules, a complaint requesting a due process hearing must be filed with the Department of Education, which then will forward the request to SOAHR. The emergency rules are effective until December 30, 2006.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The recent changes to the process for requesting and conducting due process special education hearings made the school district responsible for paying 75% of the cost of a hearing, to maintain the historical cost-sharing between the local school district and the OSEEIS. Because that provision required a local district to transfer funds to the Department of Education in order to pay for its portion of the hearing costs, it was suggested that the requirement should be included in statute, rather than simply in administrative rules. The bill codifies the requirement previously included under the rules, specifying that the school district is responsible for 75% of the cost of the hearing pursuant to R 340.1882. This would provide the statutory authority needed to include the local funds in the Department's budget.

**Response:** As noted above, R 340.1882 has been rescinded and emergency rules are in affect until the end of 2006. New administrative rules, similar to the emergency rules, have been proposed. If approved as written, those rules would take effect on December 31, 2006.

Legislative Analyst: Curtis Walker

## **FISCAL IMPACT**

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.