

DEPARTMENT OF EDUCATION
SUPERINTENDENT OF PUBLIC INSTRUCTION
SPECIAL EDUCATION PROGRAMS AND SERVICES

Filed with the secretary of state on June 27, 2024

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the superintendent of public instruction by 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)

R 340.1721b, R 340.1723c, and R 340.1733 of the Michigan Administrative Code are amended, as follows:

R 340.1721b Public agency responsibilities and timelines.

Rule 21b. (1) When a written request for an evaluation is made for a student attending a public school, all of the following apply:

(a) Within 10 school days of receipt of the written request, the public agency shall provide the parent with written notice consistent with 34 CFR 300.503 and request written parental consent to evaluate. The time from receipt of parental consent for an evaluation to the notice of an offer of a free appropriate public education or the determination of ineligibility must not be more than 30 school days. This timeline begins on receipt of the signed parental consent by the public agency requesting the consent. The parent and the public agency may agree to extend this timeline. Any extension must comply with both of the following:

(i) Be in writing.

(ii) Be measured in school days.

(b) The parent has 10 school days after receipt of the notice of an initial offer of a free appropriate public education to provide the public agency with written parental consent to provide initial special education programs and services.

(c) Within 7 school days of the date of the individualized education program team meeting, the public agency shall provide the parent with the notice of an offer of a free appropriate public education or determination of ineligibility. The public agency shall document the mode and date of delivery of the notice. The notice must identify where the programs and services will be provided and when the individualized education program will begin.

(d) Unless a parent has filed a due process complaint to request a hearing under R 340.1724f, the public agency, as defined in 34 CFR 300.33, shall initiate a proposed special education individualized education program as soon as possible and within 15 school days of the parent's receipt of written notification under subdivision (c) of this subrule, or within 15 school days of receipt of written parental consent under subdivision (b) of this subrule.

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The parties may agree to a later initiation date if the individualized education program clearly identifies the later date. A later initiation date must not be used to deny or delay programs or services because they are unavailable and must not be used for purposes of administrative convenience.

(e) For a student with an individualized education program effective at a public agency who transfers to a different public agency during the same school year, the new public agency shall immediately provide a free appropriate public education. A decision regarding implementation of an individualized education program in accordance with 34 CFR 300.323 must be made within 30 school days of enrollment.

(2) When a written request for an initial evaluation is made for a student who is parentally-placed in a private school, the public agency shall do all of the following:

(a) Within 10 school days of receipt of the written request, provide written notice consistent with 34 CFR 300.503 and request written parental consent to evaluate, when appropriate.

(b) Within 30 school days of receipt of written parental consent for an evaluation, determine eligibility and provide notice consistent with 34 CFR 300.503. The parent and the public agency may agree to extend this timeline. Any extension must comply with both of the following:

(i) Be in writing.

(ii) Be measured in school days.

(c) Comply with the requirements of 34 CFR 300.130 to 300.147.

R 340.1723c Right to independent educational evaluation.

Rule 23c. (1) Each public agency shall provide parents with information about independent educational evaluations at public expense. The information must include all of the following:

(a) Criteria regarding credentials for qualified examiners.

(b) Suggested sources and locations.

(c) Procedures for reimbursement.

(d) Reasonable expected costs.

(e) Notification that the parent is not restricted to choosing from sources suggested by the public agency.

(2) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. A parent is entitled to only 1 independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(3) When a parent requests an independent educational evaluation at public expense, the public agency shall, without unnecessary delay, either provide an independent educational evaluation at public expense or initiate a hearing under R 340.1724f to show that its evaluation is appropriate.

(4) The public agency shall respond with written notice consistent with 34 CFR 300.503 to a request for an independent educational evaluation under this rule within 7 calendar days of its receipt by indicating the public agency's intention to honor the request or initiate the hearing procedure under R 340.1724f. If there is a hearing under R 340.1724f and the hearing officer determines that the evaluation is appropriate, the parent retains the right to an independent educational evaluation, but not at public expense.

(5) The public agency shall disclose to the parent, before evaluation, whether the examiner who was contracted to provide an independent educational evaluation provides services to the public agency that are in addition to the independent educational evaluation.

(6) Unless agreeable to the parent, an examiner who regularly contracts with the public agency to provide services shall not conduct an independent educational evaluation.

R 340.1733 Program and service requirements.

Rule 33. An intermediate school district, local school district, public school academy, and any other agency shall comply with all of the following general requirements for all programs and services for students with disabilities:

(a) Special education classrooms or areas where related services are provided must have at least the same average number of square feet per student and the same light, ventilation, and heat conditions as provided for general education students in the school district.

(b) Programs for students with severe cognitive impairment and severe multiple impairments that have students under 16 years of age must not exceed a 6-year age span at any 1 time.

(c) All other special education programs that have students under 16 years of age and are operated in separate facilities must not exceed a 4-year age span at any 1 time.

(d) The age span for students who are assigned to special education programs, except for programs for students with severe cognitive impairment and severe multiple impairments, operated in elementary buildings attended by children who are nondisabled must not exceed, at any 1 time, the age span of the students who are nondisabled in the building.

(e) The age span for students who are assigned to special education programs, except for programs for students with severe cognitive impairment and severe multiple impairments, operated in secondary buildings attended by students who are nondisabled must not exceed, at any 1 time, the age span of the students who are nondisabled in the building, except in high school buildings where students up to 26 years of age may be served. As used in this subdivision, "nondisabled" does not include individuals participating in adult education programs.

(f) Programs for students with severe cognitive impairment, severe multiple impairments, and moderate cognitive impairment must comply with subdivisions (b), (c), (d), and (e) of this rule unless a program is operated in accordance with an approved intermediate school district plan where, due to the low incidence of eligible students, expanded age ranges may be necessary for programmatic feasibility and meeting the needs of students.

(g) Students with disabilities qualifying for special education programs and services shall be provided with supplies and equipment at least equal to those provided to other students in general education programs, in addition to those supplies and equipment necessary to implement the students' individualized education programs.

(h) Intermediate school districts, local school districts, public school academies, or a combination of these agencies in cooperation with public and private entities, shall provide or contract for the provision of transition services. Special education teachers shall be assigned to supervise these services. Professional special education personnel, a transition coordinator, or both, shall coordinate transition services.

(i) For worksite-based learning, there must be a written agreement signed by the student, parent, school representative, and worksite representative that includes all of the following information:

- (i) Expectations and standards of attainment.
- (ii) Job activities.
- (iii) Time and duration of the program.
- (iv) Wages to be paid to the student, if applicable.
- (v) Related instruction, if applicable.

(vi) The name of a staff member designated by the superintendent or chief administrator of the public agency to visit the student's worksite at least once every 30 calendar days for the duration of the program to check attendance and student progress and assess the placement in terms of health, safety, and welfare of the student.

(j) When an assigned instructional aide or teacher aide required by R 340.1738, R 340.1739, or R 340.1748 is absent, an instructional aide or teacher aide, as appropriate, shall be provided. In addition, when an assigned aide required by R 340.1740 is absent, an appropriate aide shall be provided.