

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

Filed with the secretary of state on February 6, 2020

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) 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 the authority of the superintendent of public instruction 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)

R 340.1701, R 340.1701a, R 340.1721e, R 340.1724f, R 340.1724h, R 340.1725e, R 340.1836, and R 340.1851 of the Michigan Administrative Code are amended as follows.

R 340.1701 Assurance of compliance.

Rule 1. (1) All public agencies in the state, as those agencies are defined in 34 CFR 300.33 (2019), shall comply with these rules and with all of the following, which these rules adopt by reference:

(a) All provisions of the state's application for federal funds under part B and part C of the Individuals with Disabilities Education Act, 20 USC 1411 to 1419 and 1431 to 1444.

(b) The requirements of part B and part C of the Individuals with Disabilities Education Act, 20 USC 1411 to 1419 and 1431 to 1444.

(c) The regulations implementing the Individuals with Disabilities Education Act, 20 USC 1400 *et seq.*, 34 CFR Part 300 (2019) and 34 CFR Part 303 (2019).

(2) Copies of the adopted matter are available, at cost of reproduction, from the office of special education of the department at 1-888-320-8384. Copies of the adopted federal matter are available from the United States Government Publishing Office at bookstore.gpo.gov.

R 340.1701a Definitions; A to E.

Rule 1a. As used in these rules:

(a) "Adaptive behavior" means a student's ability to perform the social roles appropriate for a person of his or her age and gender in a manner that meets the expectations of home, culture, school, neighborhood, and other relevant groups in which he or she participates.

(b) "Agency" means a public or private entity or organization, including a local school district, a public school academy, an intermediate school district, the department, and any other political subdivision of the state that is responsible for providing education or services to students with disabilities.

(c) "Complaint" means a written and signed allegation by an individual or organization, including the factual basis of the allegation, that there is a violation of any of the following:

- (i) Any current provision of these rules.
 - (ii) The revised school code, 1976 PA 451, MCL 380.1 to 380.1852, as it pertains to special education programs and services.
 - (iii) The Individuals with Disabilities Education Act, 20 USC 1400 *et seq.*, and the regulations implementing the act, 34 CFR Part 300 (2019) and 34 CFR Part 303 (2019).
 - (iv) An intermediate school district plan.
 - (v) An individualized education program team report, administrative law judge decision, or court decision regarding special education programs or services.
 - (vi) The state application for federal funds under the Individuals with Disabilities Education Act, 20 USC 1400 *et seq.*
- (d) "Department" means the Michigan department of education.
- (e) "Departmentalize" means a delivery system in which 2 or more special education teachers teach groups of students with disabilities by instructional content areas.
- (f) "Electronic submission" means submission by email, by facsimile, or by any other electronic means approved by the department.

R 340.1721e Individualized education program.

Rule 21e. (1) Pursuant to 34 CFR Part 300 (2019), an individualized education program team shall develop a written individualized education program that includes all of the following:

(a) A statement of measurable annual goals, including measurable short-term objectives.

(b) A statement documenting that the individualized education program team considered extended school year services.

(c) For a child age 3 through 5, a statement of the child's socialization needs and ability to participate and progress in developmentally appropriate activities.

(2) All of the following apply to the determination of the need for extended school year services:

(a) The individualized education program team shall determine if a student's current annual goals address 1 or more skills that need extended school year services. For any identified annual goal, the individualized education program team shall consider all of the following:

(i) Data that indicate that in the identified annual goal there is a potential for regression of skills beyond a reasonable period of recoupment.

(ii) Data regarding the nature or severity of the disability of the student that indicate that there is a need to provide services in the identified annual goal during breaks in the school year.

(iii) Information that indicates that in the identified annual goal the student is at a critical stage of learning or in a critical area of learning where failure to provide a service beyond the normal school year will severely limit the student's capacity to acquire essential skills.

(b) If the individualized education program team determines that any data or information described in subdivision (a)(i) to (iii) of this subrule indicates a need for

extended school year services, the individualized education program team shall include extended school year services in the student's individualized education program.

(c) The individualized education program team shall not determine the need for extended school year services based on a formula or policy that prohibits full consideration of the unique educational needs of each student.

(d) The individualized education program team shall consider related services, transportation, supplementary aids and services, and instructional programming when planning a student's extended school year services.

(e) The individualized education program team shall conclude consideration of extended school year services in sufficient time to make plans for the delivery of extended school year services.

(3) Any participant in the individualized education program team's deliberations who disagrees, in whole or in part, with the team's determination may indicate the reasons on the team's individualized education program report or may submit a written statement to be attached to the report.

(4) The individualized education program team shall determine the programs and services for a student with a disability pursuant to 34 CFR Part 300 (2019). The individualized education program team shall not restrict the individualized education program to the programs and services available.

(5) The individualized education program team shall consider the Michigan school for the deaf as a part of the total continuum of services for students who are deaf or hard of hearing. The resident district shall conduct the individualized education program team meeting that initiates an assignment to the Michigan school for the deaf. The individualized education program team shall invite representatives of the intermediate school district of residence and the Michigan school for the deaf to participate in the individualized education program team meeting.

(6) The school district of residence is responsible for conducting the initial individualized education program team meeting involving a student in its district and shall conduct, or authorize the operating district to conduct, each subsequent individualized education program team meeting at a mutually agreed upon time and place.

(7) The resident district shall attend the individualized education program team meeting when the district of residence has authorized the operating district to conduct each subsequent individualized education program team meeting.

R 340.1724f Due process complaints; procedures.

Rule 24f. (1) A parent, a public agency, or the department may request a hearing by doing both of the following:

(a) Filing a written due process complaint, signed by the complainant, with the department by mail, by personal delivery, or by electronic submission.

(b) Providing a copy of the complaint to the public agency or other party or parties that are the subject of the due process complaint.

(2) A complainant may request a hearing on matters related to 1 or more of the following:

(a) Identification.

(b) Evaluation.

- (c) Educational placement.
 - (d) Provision of a free appropriate public education.
 - (e) Provision of appropriate services under 34 CFR Part 303 (2019) to the child or the child's family.
 - (f) Assignment of financial obligations for services under 34 CFR Part 303 (2019) to the parents.
 - (g) Determination that behavior was not a manifestation of the student's disability.
 - (h) Determination of an appropriate interim alternative educational setting by the individualized education program team.
 - (i) Placement in an interim alternative setting for not more than 45 school days, because maintaining the current placement is substantially likely to result in injury to the student or others.
- (3) Upon receipt of a due process complaint, the department shall refer the complaint to the Michigan office of administrative hearings and rules, which shall appoint an administrative law judge to conduct a hearing in accordance with the Individuals with Disabilities Education Act, 20 USC 1400 *et seq.*; sections 1701 to 1761 of the revised school code, 1976 PA 451, MCL 380.1701 to 380.1761; R 792.11801 to R 792.11803; and these rules.
- (4) Any party aggrieved by a final decision and order issued by an administrative law judge under this rule may appeal to a court of competent jurisdiction within 90 days after the mailing date of the final decision and order.
- (5) Unless otherwise specified in the administrative law judge's final decision and order, the public agency shall implement the final decision and order within 15 school days of the agency's receipt of the final decision and order.
- (6) If the final decision and order of an administrative law judge requires, the public agency shall submit proof of compliance with the final decision and order to the department, documenting that the public agency has implemented the provisions of the final decision and order.

R 340.1724h Administrative law judge training.

Rule 24h. The department, in conjunction with the Michigan office of administrative hearings and rules, shall ensure that administrative law judges conducting hearings under these rules receive training, as needed, regarding administrative law, administrative procedure, special education law, special education rules, special education policy, and special education practice.

R 340.1725e Administrative law judge; duties and authority.

Rule 25e. (1) The administrative law judge has the authority to do all of the following:

- (a) Administer oaths and affirmations.
- (b) Sign and issue subpoenas requiring the attendance and giving of testimony by witnesses and the production of documents.
- (c) Provide for the taking of testimony.
- (d) Require a prehearing conference, if appropriate, to consider and take action regarding any of the following:
 - (i) The formulation and simplification of the issues.
 - (ii) Admissions of fact and documents that will avoid unnecessary testimony.

(iii) The need and scheduling for the filing of motions, briefs, and dates for further conferences and the hearing.

(iv) Settlement, which may include encouraging the use of mediation or other alternative dispute resolution options.

(v) The filing and disposition of requests or motions.

(vi) Establishing a reasonable limit on the time allowed for presenting evidence.

(vii) Other matters as may facilitate the disposition of the hearing.

(e) Control the conduct of parties or participants in the hearing for the purpose of ensuring an orderly procedure.

(f) Grant a specific extension of time at the request of either party for good cause.

(2) The administrative law judge shall disclose to both parties any relationship of a professional or personal nature that might have a bearing on his or her ability to conduct a fair hearing or render an impartial decision and shall consider motions to disqualify the administrative law judge.

(3) The administrative law judge may admit and consider evidence of a type upon which reasonably prudent persons rely in the conduct of their affairs. The administrative law judge may exclude irrelevant, immaterial, and unduly repetitious evidence. The administrative law judge shall give effect to the rules of privilege recognized by law.

(4) For matters that these rules do not specifically address, R 792.10101 to R 792.10137, R 792.11801 to R 792.11803, the Michigan court rules, and chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288, apply.

R 340.1836 Objections to plan; procedures.

Rule 136. (1) Any constituent local school district, a public school academy, or the parent advisory committee may file objections in whole or in part with the intermediate school district to an approved intermediate school district plan or a plan modification that the intermediate school district has submitted to the superintendent of public instruction for approval. Within 7 calendar days, the board of education of the intermediate school district shall send a copy of objections to the plan to the department and to all constituent local school districts, public school academies, and the parent advisory committee by certified mail, return receipt requested. Objections must specify the challenged portions of the intermediate school district plan, contain a specific statement of the reasons for objection, and propose alternative provisions.

(2) The department shall refer objections to the Michigan office of administrative hearings and rules, which shall assign an administrative law judge who shall promptly give reasonable notice of a hearing. The hearing must begin not later than 30 calendar days after the department receives the objections. The administrative law judge shall conduct the hearing according to procedures established by the department. After the appointment of the administrative law judge, the objecting party may withdraw the objections if the intermediate school district agrees.

(3) The intermediate school district, a constituent local school district, a public school academy, or the parent advisory committee may file with the department a response to objections before the hearing.

(4) Within 30 calendar days after the closing of the hearing, the administrative law judge shall submit to the department findings of fact and conclusions of law and shall recommend to the superintendent of public instruction whether the superintendent of

public instruction should approve the intermediate school district plan or modification to the plan as submitted, approve the intermediate school district plan or modification to the plan with other modifications deemed appropriate by the administrative law judge, or grant the objections as submitted. The department shall immediately mail the findings and recommendations to all parties to the intermediate school district plan. Any party may file written exceptions to the findings and recommendations with the superintendent of public instruction within 20 calendar days of receipt of the findings and recommendations and shall provide copies of the exceptions to all other parties. After review of the intermediate school district plan; the objections; the findings of fact, the conclusions of law, and the recommendations of the administrative law judge; and any exceptions, the superintendent of public instruction shall issue a final decision not more than 30 calendar days from the date the exceptions were due.

R 340.1851 Filing a state complaint.

Rule 151. (1) A state complaint filed with the office of special education of the department must meet the requirements of 34 CFR 300.153 (2019).

(2) An individual shall file a state complaint with the office of special education of the department within 1 year of the date of the alleged violation.

(3) The complainant shall deliver the state complaint to the office of special education of the department and the public agency by mail, by personal delivery, or by electronic submission.

(4) Any person acting on behalf of a complainant shall provide evidence of that authority to the office of special education of the department.