

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Education

Bureau name:

Superintendent of Public Instruction

Name of person filling out RIS:

Mary Fielding

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Rule Set Information:

ARD assigned rule set number:

2020-89 ED

Title of proposed rule set:

Special Education Programs and Services

Comparison of Rule(s) to Federal/State/Association Standard:

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

The proposed amendments will align the definition of “visual impairment” in R 340.1708 with the federal definition in 34 CFR 300.8(c)(13), and will align R 340.1721e with federal requirements in 34 CFR 300.321(e).

A. Are these rules required by state law or federal mandate?

Special education rules are required by MCL 380.1701 and 380.1703.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The proposed rules do not exceed federal standards.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

All states are subject to the same federal requirements related to special education programs and services.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

All states are subject to the same federal requirements related to special education programs and services.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

The proposed amendments align R 340.1708 and R 340.1721e with federal requirements.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The proposed amendments align R 340.1708 and R 340.1721e with federal requirements.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

MCL 24.232(8) does not apply.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, either the statute that specifically authorizes the more stringent rules or a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

The proposed amendments are not more stringent than applicable federal standards.

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

In the 2018-2019 school year, there were 903 students who were eligible for special education programs and services as students with a visual impairment. It is undetermined if the proposed amendment of R 340.1708 will affect that number. Regarding R 340.1721e, it is unknown how many students with disabilities are placed outside their resident districts.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

The number of additional students who will be determined to be eligible for special education programs and services under proposed R 340.1708 and the number of resident districts that will be impacted by the amendment of R 340.1721e are undetermined.

B. Describe the difference between current behavior/practice and desired behavior/practice.

Currently, the definition of “visual impairment” in R 340.1708 is narrower than the federal definition in the Individuals with Disabilities Education Act (IDEA), 20 USC 1400 et seq., and its implementing regulations. R 340.1721e currently imposes an unnecessary burden on resident districts to attend IEP team meetings under certain circumstances.

C. What is the desired outcome?

The desired outcome of the amendment of R 340.1708 is identification of all students eligible for special education programs and services based on visual impairment under the IDEA and its implementing regulations. The desired outcome of the amendment of R 340.1721e is to remove an unnecessary burden on resident school districts under certain circumstances.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

Under current R 340.1708, it is possible that some students who are eligible under the federal standard for special education programs and services based on visual impairment are not being identified. Under current R 340.1721e, there is an unnecessary burden on resident districts to attend IEP team meetings under certain circumstances.

A. What is the rationale for changing the rules instead of leaving them as currently written?

The United States Department of Education/Office of Special Education and Rehabilitation Services has asked the Michigan Department of Education to amend R 340.1708 to align with the federal definition of “visual impairment.” As currently written, R 340.1721e imposes an unnecessary burden on resident districts to attend IEP team meetings under certain circumstances.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

Proposed R 340.1708 protects the health, safety, and welfare of Michigan citizens by expanding eligibility for special education programs and services based on visual impairment to all students who are eligible under the federal standard in 34 CFR 300.8(c)(13). Proposed R 340.1721e removes an unnecessary burden on resident school districts.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

At this time, only R 340.1708 and R 340.1721e are proposed to be amended. Review of the entire rule set (R 340.1701 to R 340.1862) is ongoing.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

No fiscal impact on the Department of Education is anticipated.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

No Department of Education expenditures associated with the proposed rule are anticipated.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

Amendment of R 340.1708 so that Michigan's definition of "visual impairment" is not narrower than the federal definition of "visual impairment" is necessary. Neither that amendment nor the amendment of R 340.1721e is anticipated to impose fiscal or administrative burdens on the Michigan Department of Education.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

No burdens on the Michigan Department of Education are anticipated.

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

School districts may experience an increase in revenues and costs if amendment of R 340.1708 results in an increase in the number of students eligible for special education programs and services based on visual impairment.

Estimation of those increases would be purely speculative at this time.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

The proposed amendment of R 340.1708 aligns the definition of "visual impairment" with federal requirements that school districts are obligated to follow. The proposed amendment of R 340.1721e removes an unnecessary burden on some school districts.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

School districts will be required to implement R 340.1708 in determining the eligibility of students for special education programs and services based on visual impairment. It is unknown if the rule will result in more students being found eligible for those programs and services.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

No appropriation to state or local governmental units has been made and no funding source has been provided for any additional expenditures associated with the proposed rules.

16. In general, what impact will the rules have on rural areas?

The rules will have no disproportionate impact on rural areas. All school districts are subject to the requirements for special education programs and services.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

Rural school districts will be affected by the rules to the same extent that other school districts will be affected.

17. Do the proposed rules have any impact on the environment? If yes, please explain.

No environmental impact is anticipated.

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

Rules governing special education programs and services do not affect small businesses.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

Rules governing special education programs and services do not affect small businesses.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

Rules governing special education programs and services do not affect small businesses.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

Rules governing special education programs and services do not affect small businesses.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

Rules governing special education programs and services do not affect small businesses.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

Rules governing special education programs and services do not involve such performance, design, or operation standards.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

Rules governing special education programs and services do not affect small businesses.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

Rules governing special education programs and services do not affect small businesses.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

Rules governing special education programs and services do not affect small businesses.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

Rules governing special education programs and services do not affect small businesses.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

Rules governing special education programs and services do not affect small businesses.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

Rules governing special education programs and services do not affect small businesses.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Rules governing special education programs and services do not affect small businesses.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

Small businesses were not involved in the development of the proposed rules. Rules governing special education programs and services do not affect small businesses.

A. If small businesses were involved in the development of the rules, please identify the business(es).

No small businesses were involved in the development of the proposed rules.

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

There will be no actual statewide compliance costs of the proposed rule amendments on businesses.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

School districts will be directly affected by the proposed rules.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The proposed rules apply to school districts. No significant additional costs for equipment, supplies, labor, accounting, or recordkeeping are anticipated.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

No actual statewide compliance costs of the proposed rules on individuals are anticipated.

A. How many and what category of individuals will be affected by the rules?

The number of Michigan students who will be newly eligible for special education programs and services under proposed R 340.1708 is unknown.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The proposed change in R 340.1708 may result in more students being determined to be eligible for special education programs and services based on visual impairment.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

With the possible exception of cost savings to school districts no longer required to attend certain IEP team meetings, no cost reductions to businesses, individuals, groups of individuals, or governmental units are anticipated as a result of the proposed rules.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

Elementary and secondary students who are eligible for special education programs and services based on visual impairment under the federal standard but not under current R 340.1708, if any, will be the primary direct beneficiaries of proposed R 340.1708. The families of those students will indirectly benefit.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

No impact on business growth, job creation, or job elimination is anticipated.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

School districts, students with disabilities based on visual impairment, and those students' families will be affected by R 340.1708. Under certain circumstances, school districts will be affected by R 340.1721e.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

The Department of Education used the Michigan Student Data System to compile this regulatory impact statement.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rules.

No estimates have been made in preparation of this regulatory impact statement.

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

The delivery of special education services in Michigan and throughout the United States is governed by state and federal law, rules, and regulations. There are no reasonable alternatives to the proposed rules.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

There are no reasonable alternatives to the proposed rules.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

The delivery of special education services in Michigan and throughout the United States is governed by state and federal law, rules, and regulations. A private market-based mechanism for the delivery of special education programs and services is not a feasible alternative.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

No significant alternatives were considered.

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

There are no instructions on complying with the rules under MCL 24.245b(1)(c).