



STATE OF MICHIGAN  
JOCELYN BENSON, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

June 21, 2021

**NOTICE OF FILING**  
**ADMINISTRATIVE RULES**

To: Secretary of the Senate  
Clerk of the House of Representatives  
Joint Committee on Administrative Rules  
Michigan Office of Administrative Hearings and Rules (Administrative Rule #20-089-ED)  
Legislative Service Bureau (Secretary of State Filing #21-06-07)  
Department of Education

In accordance with the requirements of Section 46 of Act No. 306 of the Public Acts of 1969, being MCL 24.246, and paragraph 16 of Executive Order 1995-6, this is to advise you that the Michigan Office of Administrative Hearings and Rules filed Administrative Rule #2020-089-ED (Secretary of State Filing #21-06-07) on this date at 10:26 A.M. for the Department of Education entitled, "Special Education Programs and Services".

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.

Sincerely,

Jocelyn Benson  
Secretary of State

Melissa Malerman, Departmental Supervisor  
Office of the Great Seal

Enclosure



STATE OF MICHIGAN  
DEPARTMENT OF EDUCATION  
LANSING

GRETCHEN WHITMER  
GOVERNOR

MICHAEL F. RICE, Ph.D.  
STATE SUPERINTENDENT

CERTIFICATE OF ADOPTION

Pursuant to the authority conferred on the superintendent of public instruction by sections 1701 and 1703 of 1976 PA 451, MCL 380.1701 and 380.1703, and Executive Reorganization Order No. 1996-7, MCL 388.994, the superintendent of public instruction formally adopts the rules governing "Special Education Programs and Services."

R 340.1708 and R 340.1721e of the Michigan Administrative Code are amended.

Adopted by: Michael F. Rice, Ph.D.

A handwritten signature in black ink that reads "Michael F. Rice".

Date: 05/11/2021

2020-89 ED

**STATE BOARD OF EDUCATION**

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STATE OF MICHIGAN

GRETCHEN WHITMER  
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS  
DIRECTOR

## LEGAL CERTIFICATION OF RULES

I certify that I have examined the attached administrative rules, dated April 16, 2021, in which the Department of Education proposes to modify a portion of the Michigan Administrative Code entitled "**Special Education Programs and Services**" by:

- ◆ Amending R 340.1708 and R 340.1721e.

The Legislative Service Bureau has approved the proposed rules as to form, classification, and arrangement.

I approve the rules as to legality pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* and Executive Order No. 2019-6. In certifying the rules as to legality, I have determined that they are within the scope of the authority of the agency, do not violate constitutional rights, and are in conformity with the requirements of the Administrative Procedures Act.

Dated: May 10, 2021

Michigan Office of Administrative Hearings and Rules

By:

A handwritten signature in black ink that reads "Katie Winczewski".

Katie Winczewski,  
Attorney



Since 1941

**Legal Division**

**Kevin H. Studebaker, Director**

CERTIFICATE OF APPROVAL

On behalf of the Legislative Service Bureau, and as required by section 45 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.245, I have examined the proposed rules of the Department of Education dated April 16, 2021, amending R 340.1708 and R 340.1721e of the Department's rules entitled "Special Education Programs and Services." I approve the rules as to form, classification, and arrangement.

Dated: May 7, 2021

LEGISLATIVE SERVICE BUREAU

By

Elizabeth R. Edberg,  
Legal Counsel



STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

GRETCHEN WHITMER  
GOVERNOR

ORLENE HAWKS  
DIRECTOR

June 21, 2021

The Honorable Jocelyn Benson  
Secretary of State  
Office of the Great Seal  
Richard H. Austin Building – 1<sup>st</sup> Floor  
430 W. Allegan  
Lansing, MI 48909

Dear Secretary Benson:

Re: Administrative Rules – Michigan Office of Administrative Hearings and Rules  
Administrative Rules #: 2020-89 ED

The Michigan Office of Administrative Hearings and Rules received administrative rules, dated April 16, 2021 for the Department of Education “**Special Education Programs and Services**”. We are transmitting these rules to you pursuant to the requirements of Section 46 of Act No. 306 of the Public Acts of 1969, being MCL 24.246, and paragraph 16 of Executive Order 1995-6.

Sincerely,

Michigan Office of Administrative Hearings and Rules

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

Filed with the secretary of state on June 21, 2021

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. 1996-7, MCL 388.994)

R 340.1708 and R 340.1721e of the Michigan Administrative Code are amended, as follows:

R 340.1708 Visual impairment including blindness definition; determination.

Rule 8. (1) "Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes partial sight, blindness, and a progressively deteriorating eye condition.

(2) A determination of eligibility must be based on a full and individual evaluation by a multidisciplinary evaluation team, which must include all of the following:

(a) An eye report by an ophthalmologist or optometrist or a medical evaluation by a physician as that term is defined in article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(b) A functional vision assessment by a teacher of students with visual impairment.

(c) A learning media assessment by a teacher of students with visual impairment.

(3) A certified orientation and mobility specialist shall conduct an orientation and mobility evaluation that complies with subrule (4) of this rule for a student who satisfies at least 1 of the following:

(a) A visual acuity of 20/200 or less after routine refractive correction.

(b) A peripheral field of vision restricted to 20 degrees or less.

(c) A visual acuity of 20/200 or more and a recommendation by a teacher of students with visual impairment, an ophthalmologist, or an optometrist after an evaluation.

(4) The certified orientation and mobility specialist shall conduct the evaluation in familiar and unfamiliar settings and under a variety of lighting and terrain conditions and shall take into consideration the individual needs of the student.

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:

April 16, 2021

- (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 operating district shall invite the resident district to 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.



FILED WITH SECRETARY OF STATE

ON 6/21/21 AT 10:26 AM.