

**Michigan Office of Administrative Hearings and Rules  
Administrative Rules Division (ARD)**

MOAHR-Rules@michigan.gov

**REQUEST FOR RULEMAKING (RFR)**

**1. Department:**

Education

**2. Bureau:**

Superintendent of Public Instruction

**3. Promulgation type:**

MCL 24.244 (1)

**4. Title of proposed rule set:**

Special Education Programs and Services

**5. Rule numbers or rule set range of numbers:**

R 340.1701 - R 340.1873

**6. Estimated time frame:**

3 months

**Name of person filling out RFR:**

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**7. Describe the general purpose of these rules, including any problems the changes are intended to address.**

The primary purpose of the proposed rules is to align them with controlling federal requirements related to special education under the Individuals with Disabilities Education Act (IDEA), 20 USC 1400 et seq, and its implementing regulations, 34 CFR 300.1 et seq. As amended, the rules will support Michigan's assurance, which is required in its annual application for federal funds under Part B of the IDEA, that its policies and procedures are compliant with IDEA requirements or that Michigan has committed to make changes to support such assurances.

The amendments of R 340.1721b will bring the rule into compliance with controlling federal requirements regarding students who are parentally-placed in private schools. Currently, under R 340.1721b, a school district shall provide an offer of free appropriate public education (FAPE) to all students determined to be eligible for special education programs and services. This conflicts with the IDEA and its implementing regulations, 34 CFR 300.130 to 300.144. 34 CFR 300.137(a) provides: "[N]o parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school." This regulation has been addressed by the United States Education Department, Office of Special Education Programs (USED OSEP), which has advised that, under the IDEA, if a parent makes clear their intention to maintain the enrollment of their child with a disability in a private school where the parent has placed the child, the school district where the child resides is not obligated to make FAPE available to the child or to develop an individualized education program (IEP) for the child. See question A-6, pages 8-9 of:

Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools. (PDF)

The proposed amendments of R 340.1721b align the rule with the federal law that the offer of FAPE does not apply to students parentally-placed in private schools.

The proposed amendments of R 340.1723c will align the rule with federal requirements related to a parent's request for an independent education evaluation of their child at public expense when they disagree with an evaluation obtained by a public agency. Currently, R 340.1723c requires that such a request be in writing. This conflicts with the controlling federal regulation, 34 CFR 300.502. Under 34 CFR 300.502(e)(2), a public agency may only impose certain conditions related to obtaining an independent evaluation; those conditions do not include that the request be in writing. The proposed amendment of R 340.1723c removes the writing requirement.

**8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).**

The superintendent of public instruction has specific promulgation authority for these rules.

**A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).**

The superintendent of public instruction has promulgation authority for these rules under sections 1701 and 1703 of the revised school code, 1976 PA 451, MCL 380.1701 and 380.1703, and Executive Reorganization Order Nos. 1996-6 and 1996-7, MCL 388.993 and 388.994.

**B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.**

MCL 380.1701 and 380.1703 mandate rules related to special education programs and services.

**9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.**

R 340.1721b conflicts with 34 CFR 300.130 to 300.144. R 340.1723c conflicts with 34 CFR 300.502.

**10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?**

The subject matter of the proposed rules is not currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda.

**11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?**

R 340.1721b is listed on the Department of Education's 2022-2023 annual regulatory plan as a rule under consideration for amendment during the current year. R 340.1723c was not listed on the department's 2022-2023 annual regulatory plan.

**12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?**

MCL 24.244 (1)

**A. Explain why the rules are being promulgated under 24.244.**

The proposed rules will be promulgated under section 44(1) of the Administrative Procedures Act, MCL 24.244, because the purpose of the proposed amendments is to align the rules with controlling federal law. In addition, the amendment of R 340.1723c will decrease the burden on a parent who objects to a public agency's evaluation of their child for eligibility for special education services.

**Based on the information provided in this RFR, MOAHR concludes that there are sufficient policy and legal bases for approving the RFR. The RFR satisfies the requirements of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and Executive Order No. 2019-6.**