

**Michigan Office of Administrative Hearings and Rules**  
MOAHR-Rules@michigan.gov

**AGENCY REPORT TO THE  
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

**1. Agency Information**

**Agency name:**

Education

**Division/Bureau/Office:**

Superintendent of Public Instruction

**Name of person completing this form:**

Mary Fielding

**Phone number of person completing this form:**

517-241-6986

**E-mail of person completing this form:**

FieldingM@michigan.gov

**Name of Department Regulatory Affairs Officer reviewing this form:**

Mary Fielding

**2. Rule Set Information**

**MOAHR assigned rule set number:**

2023-76 ED

**Title of proposed rule set:**

Special Education Programs and Services

**3. Purpose for the proposed rules and background:**

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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” (OSEP QA 22-01, revised February 2022) at:

[https://sites.ed.gov/idea/files/QA\\_on\\_Private\\_Schools\\_02-28-2022.pdf](https://sites.ed.gov/idea/files/QA_on_Private_Schools_02-28-2022.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.

The proposed amendment of R 340.1733(d) will support the requirement for students with disabilities to be educated in the least restrictive environment along with their nondisabled peers to the maximum extent appropriate in accordance with 34 CFR 300.114. As the rule is currently written (“The age span for students who are assigned to special education programs...operated in elementary buildings attended by children who are nondisabled, shall not exceed, at any 1 time, a 6-year age span or the age span of the students who are nondisabled in the building, whichever is less”), it limits the access of a student with a disability to their general education peers. Age span should be the same for disabled and non-disabled peers.

Other changes align the rules with current standards of drafting, including proper use of “must” and “shall,” and “that” and “which,” and make other non-substantive changes.

**4. Summary of proposed rules:**

R 340.1721b, R 340.1723c, and R 340.1733 are proposed to be amended. The general purpose of the proposed R 340.1721b is to align the rule with the requirements of the Individuals with Disabilities Education Act (IDEA), 42 US 1400 to 1482, regarding students who are parentally-placed in nonpublic schools. The general purpose of the proposed R 340.1723c is to remove the requirement that a parent's request for an independent educational evaluation of their child be in writing. The general purpose of the proposed R 340.1733 is to revise the age span of preschool programs located in elementary school buildings.

Online Public Written Comment Tool: <http://tinyurl.com/34c658yv>

**5. List names of newspapers in which the notice of public hearing was published and publication dates:**

Detroit Free Press – March 22, 2024  
Grand Rapids Press – March 26, 2024  
Marquette Mining Journal – March 22, 2024

**6. Date of publication of rules and notice of public hearing in Michigan Register:**

4/1/2024

**7. Date, time, and location of public hearing:**

4/9/2024 09:00 AM at Tuesday, April 9, 2024 9:00 a.m.-11:00 a.m. <http://tinyurl.com/kkstkmvtv>;  
Thursday, April 11, 2024 3:30 p.m.-5:30 p.m. <http://tinyurl.com/4y3jyu6n> , Tues, April 9, 2024 1:00-5:00 p.m. Mich Library & Hist Ctr, 1st Floor Forum 702 W. Kalamazoo St., Lansing, MI 48915 or <http://tinyurl.com/5cpy55vu>

**8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:**

<https://ARS.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1503>

**9. List of the name and title of agency representative(s) who attended the public hearing:**

Michigan Department of Education Office of Special Education:  
Nancy Rotarius, Special Education Consultant, Policy, Accountability Unit  
Chantel Mozden, Education Consultant, Accountability Unit  
Deborah Schultz, Secretary, Performance Reporting Unit

**10. Persons submitting comments of support:**

Shelley Dickerson  
Julie Gordon, Northwest Education Services  
Beth Longshore  
Matthew Smith  
Janet Timbs  
Anonymous #1  
Anonymous #3

**11. Persons submitting comments of opposition:**

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Kris Keranen, Disability Rights Michigan  
 Sherri Boyd, The Arc Michigan  
 Michelle Driscoll, The Arc Michigan  
 Julie Gordon  
 Beth Longshore  
 Shelley Dickerson  
 Anonymous #1  
 Anonymous #2  
 Anonymous #3

**12. Persons submitting other comments:**

None.

**13. Identify any changes made to the proposed rules based on comments received during the public comment period:**

	<b>Name &amp; Organization</b>	<b>Comments made at public hearing</b>	<b>Written Comments</b>	<b>Agency Rationale for Rule Change and Description of Change(s) Made</b>	<b>Rule number &amp; citation changed</b>
1	Kris Keranen Disability Rights Michigan (DRM)		Comments DRM notes the language change appears to have changed the meaning of the rule. The new language states, "The parent shall provide the public agency with written parental consent to provide initial special education programs and services within 10 school days of the receipt of notice of an initial offer of a free appropriate public education." This appears to suggest that the	The Office of Special Education (OSE) recognizes the conflict with federal regulations and the proposed change will not be made to R 340.1721b(1)(b).  OSE will consider guidance and potential future rule changes to clarify the voluntary nature of parent consent that is required under the Individuals with Disabilities Education Act.	R 340.1721b (1)(b)

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			<p>parent must give their consent to the initial IEP [individualized education program].</p> <p>That contradicts the federal law, which explicitly states that a parent may delay or withhold consent for an initial IEP, in order to prevent its implementation, and the district may not use procedures for due process nor mediation to obtain a ruling or agreement that the initial IEP services may be provided. 34 CFR 300.300(b)</p> <p>DRM suggests adding clarifying language that explains the initial IEP cannot be implemented without parental consent, but makes it clear the parental consent must be informed and voluntary, as required by federal law. 34 CFR 300.9</p>	
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**14.Date report completed:**

6/17/2024