

**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:**

2023-76 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 rules align with the Individuals with Disabilities Education Act (IDEA), 20 USC 1400 to 1482, concerning special education programs and services for students parentally-placed in nonpublic schools, independent education evaluations, and placement of students with disabilities in the least restrictive environment. There are no standards set by a state or national licensing agency or accreditation association.

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

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

**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 a federal standard.

**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. No similarly situated states deviate from the federal standards.

**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 rules align with requirements of the IDEA.

**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 rules align with, but do not duplicate, the requirements of the IDEA and its implementing regulations, 34 CFR Part 300.

**Purpose and Objectives of the Rule(s)**

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

The proposed amendments of R 340.1721b are designed to clarify the special education roles of school districts as they relate to students parentally-placed in nonpublic schools. In the 2022-2023 school year, there were 5,054 students receiving special education services who were parentally placed in nonpublic schools in Michigan.

The amendments of R 340.1723c remove the requirement that a parent's request for an independent education evaluation (IEE) be in writing, which places an impermissible burden on parents. Data about the number of IEEs that are requested and provided at public expense are not collected.

The amendments of R 340.1733 regarding age span will support districts in providing preschool programs within elementary buildings. Since October 20, 2023, 11 school districts and 26 intermediate school districts have applied to the Department of Education for waivers of the age span requirement of R 340.1733(d). The proposed rules will allow expanded age spans, eliminating the need to apply for a waiver in many situations.

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

All Michigan school districts will benefit from clarification of their responsibilities related to the provision of special education programs and services for students parentally-placed in nonpublic schools, independent education evaluations, and age spans for students placed in elementary buildings.

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

Currently, there is a lack of clarity in the rule set in the following areas:

1. The responsibilities of school districts related to the provision of special education programs and services for students parentally-placed in nonpublic schools.
2. The responsibility of parents to place requests for independent education evaluations at public expense in writing.
3. Placement of preschool students with disabilities in programs within an elementary school building.

**C. What is the desired outcome?**

The desired outcomes are the following:

1. Clarification of the responsibilities of school districts related to the provision of special education programs and services for students parentally-placed in nonpublic schools, which will help to ensure that Michigan school districts' actions related to students parentally-placed in nonpublic schools align with the IDEA.
2. Removal of the impermissible burden on parents to make written requests for independent education evaluations at public expense.
3. Allowance of expanded age spans of students with disabilities within elementary buildings to support programming that allows all students access to their similarly aged general education peers.

**5. 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 R 340.1721b, a school district is required to provide a free appropriate public education (FAPE) to all students. That rule does not align with the requirements of the IDEA as they relate to students parentally-placed in nonpublic schools. The proposed rule will clarify that students who are parentally placed in nonpublic schools are not eligible for a FAPE and therefore the school district is not required to offer a FAPE.

Under R 340.1723c, a parent is required to put a request for an independent education evaluation at public expense in writing, placing an impermissible burden on parents.

The age span requirement in R 340.1733(d) limits the access of children with disabilities to early childhood programs and services within an elementary building and thus their access to their nondisabled peers.

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

The proposed rules will clarify the responsibilities of school districts as that relate to special education programs and services for students parentally-placed in nonpublic schools, eliminate a burden on parents when they request independent education evaluations of their children at public expense, and improve access in age-appropriate environments for students with disabilities to their nondisabled peers.

**6. 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.**

The proposed rules protect the health, safety, and welfare of Michigan citizens by clarifying the responsibilities of school districts related to the provision of special education programs and services for students parentally-placed in nonpublic schools, requests for independent education evaluations at public expense, and placement of students with disabilities in preschool programs. The proposed rules align with the requirements of the IDEA, and there is no alternative that is less burdensome to Michigan school districts.

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

There are no rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

### **Fiscal Impact on the Agency**

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

**8. 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.

**9. 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 rules are anticipated.

**10. 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.**

Revisions of R 340.1721b, R 340.1723c, and R 340.1733 are necessary and suitable to clarify the responsibilities of school districts related to the provision of special education programs and services for students under the IDEA and do not place burdens on individuals or on the Department of Education. The proposed amendment of R 340.1723c decreases the burden on parents by removing the requirement that requests for independent educational evaluations at public expense be in writing. The proposed amendment of R 340.1733 eases the burden on school districts that provide preschool special education programs and services in elementary buildings.

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

No such additional burdens are identified.

### **Impact on Other State or Local Governmental Units**

**11. 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.**

No increase or significant decrease in revenues or costs to Michigan school districts due to the proposed changes is anticipated.

The proposed amendments of R 340.1721b will not result in a change in revenues or costs to Michigan school districts because the types and quantity of services provided to students parentally-placed in nonpublic schools are determined under the consultation process as required by the IDEA, which will not change under the proposed rule.

Currently, data about the number of independent education evaluations requested and provided at public expense under R 340.1723c are not collected.

School districts are currently able to offer preschool programs in elementary buildings with age spans that do not comply with the requirements of R 340.1733(d) by obtaining a waiver from the Department of Education. The proposed amendment of R 340.1733(d) will result in a decrease in clerical tasks and recordkeeping for school districts.

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

The proposed rules clarify the responsibilities of school districts related to the provision of special education programs and services. Under the proposed rules, a school district shall not deny a parent's request for an independent education evaluation at public expense solely because the request is not in writing.

**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.**

Under the IDEA, school districts are required to document compliance with federal requirements. These rule revisions do not change that responsibility. To comply with proposed R 340.1723c, a school district will be required to accept a parent's oral request for an independent education evaluation at public expense.

**13. 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 additional expenditures associated with the proposed rules. No additional expenditures are anticipated.

## **Rural Impact**

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

The proposed rules will have no disproportionate impact on rural areas. The same requirements related to special education programs and services apply throughout Michigan.

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

Rural areas will be affected by the proposed rules to the same extent that other areas will be affected.

## **Environmental Impact**

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

No environmental impact is anticipated.

## **Small Business Impact Statement**

**16. 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.

**17. 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.

**18. 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.

**19. 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.

**20. 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.

**21. 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.

**22. 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.

**23. 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.

**24. 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.

**25. 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.

**Cost-Benefit Analysis of Rules (independent of statutory impact)**

**26. 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 rules on businesses or groups.

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

The proposed rules do not impose costs on businesses or groups. School districts will be directly affected by and benefit from the proposed rules in that their responsibilities under the IDEA related to the provision of FAPE and requests for independent education evaluations at public expense will be clarified. Data about the frequency of requests for independent education evaluations at public expense and the cost of those evaluations are not reported to the Department of Education. School districts will be directly affected by and benefit from the amendment of R 340.1733 by way of the added flexibility for providing special education programs and services in elementary buildings without having to apply for a waiver from the Department of Education in many instances.

**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 do not impose additional costs on businesses or groups.

**27. 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.**

The proposed rules do not impose actual statewide compliance costs on individuals.

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

The proposed rules do not impose actual statewide compliance costs on individuals. Students with disabilities and their families will be affected by the rules.

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

The proposed rules do not impose actual statewide compliance costs on individuals. Parents who request independent education evaluations of their children at public expense will be affected by the rules in that the rules eliminate the burden to put their requests in writing.

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

With the exception of the possibility of slight reductions of school districts' costs related to providing a document that offers FAPE in instances when it is not required by the IDEA, and related to the need to obtain a waiver from the Department of Education to provide a preschool special education program in an elementary building, there are no cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules. Cost reductions for parents who will no longer be required to put their requests for independent education evaluations of their children at public expense in writing will be de minimis.

**29. 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.**

The primary and direct benefit of the proposed rules will be to bring the rules into alignment with the requirements of the IDEA. Under R 340.1721b, the over 900 Michigan school districts will no longer be required to provide an offer of a FAPE to students who are parentally-placed in nonpublic schools. In the 2022-2023 school year, 5,054 students receiving special education services were parentally-placed in nonpublic schools in Michigan. Under R 340.1723c, parents will be allowed to make oral requests for independent educational evaluations at public expense, a practice that is currently acceptable under federal law and Department of Education guidance. R 340.1733 will allow greater flexibility for school districts to operate preschool programs in elementary school buildings without having to obtain a waiver from the Department of Education.

Secondary benefits of the proposed rules will be students with disabilities and students who are being evaluated for eligibility for special education programs and services. There are approximately 1.4 million public school children in Michigan. In the 2022-2023 school year, there were 200,591 students enrolled in Michigan public schools who had individualized education programs who received special education programs and services.

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

The proposed rules will not impact business growth or job creation or elimination in Michigan.

**31. 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.**

No individuals or businesses will be disproportionately affected by the rules as a result of their industrial sector, business size, or geographic location. If school districts, students, and students' parents are considered segments of the public, they will be affected by the proposed rules, which address school districts' responsibilities under the IDEA and remove a burden on parents related to requests for independent education evaluations of their children at public expense.

**32. 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 relied on federal law and guidance from the United States Department of Education Office of Special Education Programs in compiling the regulatory impact statement, including "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).

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

No estimates or assumptions were made in compiling the regulatory impact statement.

## **Alternative to Regulation**

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

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

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

**35. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.**

No significant alternatives were considered during development of the proposed rules.

## **Additional Information**

**36. 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 regarding the method of complying with the proposed rules as described in MCL 24.245b (1)(c).