

Michigan Office of Administrative Hearings and Rules

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**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:

2020-89 ED

Title of proposed rule set:

Special Education Programs and Services

3. Purpose for the proposed rules and background:

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R 340.1708

On May 22, 2017, the United States Department of Education Office of Special Education and Rehabilitative Services (USDOE/OSERS) issued a memorandum entitled “Eligibility Determination for Children Suspected of Having a Visual Impairment Including Blindness under the Individuals with Disabilities Education Act.” Subsequently, the USDOE/OSERS requested the Michigan Department of Education (MDE) to review its criteria for determining if a child has a visual impairment to ensure that the criteria are not narrower than allowed under the Individuals with Disabilities Education Act (IDEA), 20 USC 1400 et seq., and its implementing regulations. After review, the MDE determined that R 340.1708 is more restrictive than allowed by federal law, necessitating amendment of the rule. Beginning in the fall of 2019, MDE shared the proposed amendment with multiple stakeholders, including the Michigan Association of Administrators of Special Education, the Special Education Advisory Committee, and intermediate school district special education directors. These stakeholders were given information about why amendments were being proposed. Additionally, they were able to provide any insight they may have about the effects of the proposal. The stakeholders supported the amendment of this rule.

Another purpose of the proposed rule is to broaden the circumstances under which a certified orientation and mobility specialist shall conduct an evaluation.

R 340.1721e

R 340.1721e(7) was amended effective February 13, 2020. The intent of the amendment was to remove the burden of inviting the resident district from the parent and to place the burden on the operating district. Instead, the February 13 amendment mistakenly placed an unnecessary burden on the resident district by requiring its attendance. The proposed amendment returns the language to what was intended.

4. Summary of proposed rules:

The proposed rules address eligibility for special education programs and services for students with visual impairments and procedures for developing individualized education programs for students who are placed in special education programs outside of their resident districts.

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

Notice of the public hearing was published in The Mining Journal and the Detroit Free Press on March 1, 2021, and The Grand Rapids Press on March 6, 2021.

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

3/1/2021

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

3/16/2021 04:00 PM at Virtual Zoom , <https://us02web.zoom.us/j/84911802958>

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=1215>

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

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Michigan Department of Education: Roxanne Balfour, Mary Fielding, Rebecca McIntyre, Ashley Reed, Nancy Rotarius, Janis Weckstein, and Lori Schulze (contractor).

Bromberg & Associates: Juliana Poletti, Justine Bryant, Kathryn Corr, and Laura Clark (American Sign Language interpreters), and Kari Box and Terry O'Connor (closed captioning transcribers).

10. Persons submitting comments of support:

R 340.1708 (entire): Special Education Advisory Committee, Michigan Association of Administrators of Special Education, Michigan Council for Exceptional Children, Vanessa Cheatham, Greg Morris, Jennifer Barley, Disability Rights Michigan, Anonymous (resident of Kalamazoo)

R 340.1708 (title): Renee Thelen, Sarah Stargardt, Lori Morningstar (Flushing Community Schools), Victoria Haber, Sherry Rye

R 340.1708(1): Sarah Stargardt, Lori Morningstar (Flushing Community Schools)

R 340.1708(3): Renee Thelen, Victoria Haber

R 340.1708(4): Sarah Stargardt, Lori Morningstar (Flushing Community Schools), Victoria Haber

R 340.1721e (entire): Special Education Advisory Committee, Michigan Association of Administrators of Special Education, Michigan Council for Exceptional Children, Greg Morris, Renee Thelen, Sarah Stargardt, Jennifer Barley, Lori Morningstar (Flushing Community Schools), Victoria Haber, Anonymous (resident of Kalamazoo), Disability Rights Michigan, Laura Lamore (Grand Rapids Public Schools), Katie Flynn (Ottawa Area Intermediate School District)

11. Persons submitting comments of opposition:

R 340.1708 (entire) Anonymous, Katie Flynn, Julie Unatin, Anonymous (outside of Michigan)

R 340.1708(1): Renee Thelen, Victoria Haber, Sherry Rye, Elizabeth Mulligan

R 340.1708(2): Renee Thelen, Sarah Stargardt, Lori Morningstar (Flushing Community Schools), Victoria Haber, Sherry Rye

R 340.1708(3): Lori Morningstar (Flushing Community Schools), Sarah Stargardt

R 340.1708(4): Renee Thelen

R 340.1721e: Anonymous(outside of Michigan)

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

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	Name & Organization	Comments made at public hearing	Written Comments	Agency Rationale for change	Rule number & citation changed
1	Victoria Haber		Children with progressive eye conditions should be eligible for services. A child may have 20/20 vision but also have a diagnosis of retinitis pigmentosa (RP). With RP, the vision may decrease gradually or rapidly but it will eventually lead to blindness.	The Department of Education recognizes the need to include a student with a progressively deteriorating eye condition as eligible for special education under the category of a student with a visual impairment. Language addressing a progressively deteriorating eye condition was returned to this subrule.	R 340.1708 (1)
2	Sherry Rye		At times, it is not possible to get an eye report with an acuity or diagnosis for a child under 5 years old without the child having to undergo anesthesia for an exam. Many of these severely impaired little ones are medically fragile; undergoing anesthesia is not an option for them.	The Department of Education recognizes the need to allow for a medical evaluation by a physician when a student is not able to receive an eye report from an optometrist or ophthalmologist. This subdivision was revised to address this issue.	R 340.1708 (2)(a)

13.Date report completed:

4/27/2021