

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

Filed April 3, 2009

These rules take effect immediately upon filing with the Secretary of State unless adopted under sections 33, 34, 45a(6), or 48 of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By the authority conferred on the superintendent of public instruction by sections 1701 and 1703 of 1976 PA 451, MCL 380.1701 and MCL 380.1703, and Executive Reorganization Order Nos. 1996-6 and 1996-7, MCL 388.993 and MCL 388.994)

R 340.1721a, R 340.1721e, R 340.1851, R 340.1852, R 340.1853, and R 340.1854 of the Michigan Administrative Code are amended; and R 340.1855 is added to the Code as follows.

R 340.1721a Evaluation procedure.

Rule 21a. (1) Each student suspected of having a disability shall be evaluated by a multidisciplinary evaluation team as defined in R 340.1701b(b). If an initial evaluation review is conducted by the individualized education program team, then the multidisciplinary evaluation team shall complete the evaluation as determined by the individualized education program team in addition to requirements as defined in R 340.1705 to R 340.1716 as applicable to the suspected impairment.

(2) The multidisciplinary evaluation team shall do both of the following:

(a) Complete a diagnostic evaluation.

(b) Make a recommendation of eligibility and prepare a written report to be presented to the individualized education program team by the appointed multidisciplinary evaluation team member. The report shall include information needed to determine a student's present level of academic achievement and functional performance and educational needs of the student. Information presented to the individualized education program team shall be drawn from a variety of sources, including parent input.

(3) Special education personnel who are authorized to conduct evaluations of students suspected of having a disability may provide prereferral consultation to general education personnel in accordance with procedures established by the department.

R 340.1721e Individualized education program team meeting; determination of eligibility for special education programs and services; individualized education program.

Rule 21e. (1) The superintendent or his or her designee shall convene an individualized education program team meeting.

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(2) An individualized education program shall be based on all diagnostic, medical, and other evaluative information requested by the team, or provided by the parent or student who is disabled and shall include all of the following information, in writing:

(a) A statement of the student's present level of academic achievement and functional performance.

(b) A statement of annual goals, including short-term objectives.

(c) Appropriate objective criteria and evaluation procedures and schedules for determining whether the objectives are being achieved.

(d) A statement documenting that extended school year services were considered.

(3) In considering extended school year services, the individualized education program team shall do all of the following:

(a) 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 indicates 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 the data or information in any of subrule (3)(a)(i) to (iii) of this rule indicate a need for extended school year services, then extended school year services shall be included in the student's individualized education program.

(c) Determination of the need for extended school year services shall not be based on a formula or policy that prohibits full consideration of the unique educational needs of each student.

(d) Related services, transportation, supplementary aids and services, and instructional programming shall be considered when planning a student's extended school year services.

(e) Consideration of extended school year services shall be accomplished in sufficient time to make plans for the delivery of extended school year services.

(4) The individualized education program team shall determine whether the student has a need for placement with a special education teacher who is endorsed in a particular disability category.

(5) 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.

(6) The Michigan school for the deaf shall be considered a part of the total continuum of services for students with a hearing impairment. The resident district shall conduct the individualized education program team meeting that initiates an assignment into the Michigan school for the deaf. Representatives of the intermediate school district of residence and the Michigan school for the deaf shall be invited to participate in the individualized

education program team meeting. The state board of education shall adopt procedures for placement at the Michigan school for the deaf.

(7) The Michigan school for the blind shall be considered a part of the total continuum of services for students with a visual impairment. The resident district shall conduct the individualized education program team meeting that initiates an assignment into the Michigan school for the blind. Representatives of the intermediate school district of residence and the Michigan school for the blind shall be invited to participate in the individualized education program team meeting. The state board of education shall adopt procedures for placement at the Michigan school for the blind.

PART 8. STATE COMPLAINTS

R 340.1851 Filing a state complaint.

Rule 151. (1) A state complaint, meeting the requirements of 34 CFR § 300.153, shall be filed with the department and a copy forwarded to the public agency that is the subject of the state complaint.

(2) A state complaint shall be filed with the department within 1 year of the date of the alleged violation.

(3) A state complaint shall be delivered to the department and the public agency by mail, by fax, or by hand.

(4) Any person acting on behalf of a complainant shall provide evidence of that authority.

R 340.1852 General responsibilities of public agencies, intermediate school districts, and the department.

Rule 152. (1) All public agencies shall receive allegations of violations of state or federal regulations pertaining to special education. When an allegation is made orally, the recipient public agency may take formal or informal action as necessary to resolve the situation in compliance with applicable provisions of law, but, at a minimum, shall immediately do all of the following:

(a) Inform the person making the allegation that he or she has a right to file a written state complaint with the department.

(b) Inform the person making the allegation that the filing of a state complaint may be delayed so that mediation or other informal resolution may be attempted. The right to file a state complaint is retained if the informal attempts to resolve the concern in a timely manner are unsuccessful.

(c) Provide the person making the allegation with a copy of part 8 of these rules and the department's procedures pertaining to state complaints.

(d) Offer to assist the person in filing a state complaint.

(2) All public agencies shall have procedures to receive state complaints.

(3) If requested, the intermediate school district shall assist a person in writing a state complaint.

(4) When a state complaint is filed, the department shall provide the complainant with all of the following: (a) A copy of part 8 of these rules. (b) A copy of the procedures established by the department pertaining to state complaints. (c) A copy of the procedural safeguards notice. (d) Information regarding mediation.

R 340.1853 Investigation, report, and final decision of a state complaint.

Rule 153. (1) The department and the intermediate school district shall investigate state complaints pursuant to part 8 of these rules, procedures established by the department pertaining to state complaints, and the federal regulations implementing the individuals with disabilities education act. The department may independently initiate and investigate a state complaint.

(2) The intermediate school district shall appoint a staff member, or contract with an independent agent, to conduct the investigation with the department. The intermediate school district investigator shall not have administrative authority over programs or services against which a state complaint is filed.

(3) The public agency shall cooperate with the department and the intermediate school district during the conduct of the investigation, including submitting documents requested by the intermediate school district or the department.

(4) The department, during the pendency of the state complaint, shall require any public agency against which the complaint was lodged to maintain the educational status, program placement, and services of an involved student as it was before the complaint if, in the judgment of the department, not doing so constitutes a violation of the student's due process protections.

(5) The department shall issue a final written decision within 60 calendar days after a complaint is filed.

(6) The department may grant an extension of time if exceptional circumstances exist with respect to a particular state complaint. A denial of an extension request is final.

(7) The department shall mail the final written report to the complainant, any public agency subject to the state complaint, and the intermediate school district.

R 340.1854 Corrective action and proof of compliance.

Rule 154. (1) The public agency shall correct violations as directed by the department.

(2) The intermediate school district shall assist the public agency in monitoring the progress of the corrective action.

(3) The public agency shall submit proof of compliance to the department and the intermediate school district documenting that the violation is corrected within the time line specified in the corrective action.

R 340.1855 Failure to comply with corrective action in a timely manner; sanctions.

Rule 155 (1) If a public agency fails to correct known violations of law in a timely manner, or fails to cooperate with the department or the intermediate school district during the conduct of its investigation, or presents known falsification of fact, or continues repetition of similar violations, the department shall do 1 or more of the following:

(a) If the public agency in violation is a local school district or a public school academy, then the department shall direct the intermediate school district to provide complying programs and services pursuant to section 1702 of 1976 PA 451, MCL 380.1702.

(b) If the public agency in violation is an intermediate school district, the department may withdraw the authority of the intermediate school district to operate a program that is in noncompliance and simultaneously require the public agency of residence to place the affected student or students in an appropriate program.

(c) Withhold federal funds under part B of the individuals with disabilities education act, 20 U.S.C. chapter 33, §1400, et seq.

(d) Apply other penalties under 1976 PA 451, MCL 380.1.

(e) Withhold state funds under 1979 PA 94, MCL 388.1601, or any other governing statute.

(f) Withhold, withdraw, or suspend such endorsements, approvals, credentials, grants, or authorizations pertaining to special education personnel or projects that the department, or its designee, had authority to grant as authorized by, and in accordance with, the procedures required by law.

(g) Seek enforcement of the corrective action in a court of appropriate jurisdiction.