

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

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 ~~educational~~ **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.

(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 ~~educational~~ **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 serious 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.

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

(e) A district is not required to create new programs as a means of providing extended school year services to students with disabilities in integrated or inclusive settings if the school does not provide services at that time for students without disabilities.

(f) Consideration of extended school year services shall be made in a timely manner.

(g) The individualized education program team shall follow the standards for extended school year services in Michigan as approved by the state board of education.

~~(3) (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. This subrule takes effect on July 1, 2003.~~

~~(4) (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 therefore on the team's individualized education program report or may submit a written statement to be attached to the report.~~

~~(5) (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.

~~(6)~~ (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 ~~Intermediate school district's responsibility for investigation of complaints; report.~~ **Filing a state complaint.**

Rule 151. (1) ~~An intermediate school district, upon receipt of a complaint, shall investigate the complaint under these rules and the procedures approved by the state board of education. The investigation shall include direct communication with the complainant or the complainant's authorized representative. The complainant shall be informed of the specific procedures for conducting the investigation, filing reports, and appealing the conclusions contained in the investigation report. The investigation shall be completed and a report shall be filed by the intermediate school district within 21 calendar days after the date of receipt of the complaint. The report shall be filed with the complainant, the local school district or public school academy, if applicable, and the department. The report shall contain information as specified in procedures approved by the state board of education and shall contain notification of the complainant's right to appeal the conclusions of the investigation and to have the department review the intermediate school district's decision on the complaint.~~ **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) ~~The intermediate school district may contract with an independent agent to conduct the investigation or shall appoint a person who is a member of the special education staff to be responsible for investigating complaints under this part. The person shall not have administrative authority over programs or services against which a complaint may be filed. Copies of this part and the procedures approved by the state board of education shall be made available by the intermediate school district for distribution to its employees, the employees of constituent local school districts, the employees of constituent public school academies, the public, and other agencies operating special education programs and services.~~ **A state complaint shall be filed with the department within 1 year of the date of the alleged violation.**

(3) ~~An intermediate school district receiving a complaint under its jurisdiction shall, during the pendency of any proceeding stipulated in this rule, require any agency against which the complaint was lodged to maintain the educational status, program placement, or service of an involved student as it was before the complaint if, in its judgment, not doing so may constitute a violation of the student's due process protection or if so directed by the~~

~~department~~ **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 Department responsibilities for processing complaints and conducting state investigations~~ **General responsibilities of public agencies, intermediate school districts, and the department.**

~~Rule 152. (1) The department may, for good cause, investigate a signed, written complaint under the procedures approved by the state board of education, regardless of the status of the investigation under R 340.1851.~~ **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) Upon receipt of a complainant's appeal for review of the intermediate school district's decision on the complaint, the department, under the procedures approved by the state board of education, shall do all of the following:~~

~~(a) Carry out an independent on-site investigation if the department determines that an investigation is necessary.~~

~~(b) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.~~

~~(c) Review all relevant information and make an independent determination as to whether the educational agency is violating any of the provisions of law specified in the definition of "complaint" in R 340.1701a(e).~~ **All public agencies shall have procedures to receive state complaints.**

~~(3) The department shall issue a written report to the complainant and to the educational agency against which the complaint was filed that addresses each allegation in the complaint and contains all of the following information:~~

~~(a) Findings of fact and conclusions.~~

~~(b) The reasons for the department's final decision.~~

~~(c) Procedures for effective implementation of the department's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.~~ **If requested, the intermediate school district shall assist a person in writing a state complaint.**

~~(4) The intermediate school district is responsible for assisting the agency in violation, for monitoring progress of the corrective action, and for informing the department when the~~

~~corrections have been completed. 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.~~

~~(5) Proof of compliance shall be submitted by the educational agency that was in violation within the time line specified in the directive for correction.~~

~~(6) Upon failure of an educational agency to correct known violations of law, upon failure of the educational agency in violation to cooperate with the department or the intermediate school district during the conduct of its investigation, or upon known falsification of fact or continued repetition of similar violations, the state board of education shall do 1 or more of the following:~~

~~(a) If the educational agency in violation is a local school district or a public school academy, then the state board of education shall direct the intermediate school district board to provide complying programs and services as stipulated in 1976 PA 451, MCL 380.1702.~~

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

~~(c) Withhold federal funds under section 1413(d)(1) of the individuals with disabilities education act of 1997, 20 U.S.C. §1413(d)(1).~~

~~(d) Apply other penalties, as stipulated in 1976 PA 451, MCL 380.1 et seq.~~

~~(e) Withhold state funds under 1979 PA 94, MCL 388.1601 et seq., 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 state board of education or its designee had authority to grant as authorized by, and in accordance with, the procedures required by law.~~

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

~~(7) The state board of education or its designee, during the pendency of any proceeding under this part, shall require any educational agency against which the complaint was lodged to maintain the educational status, program placement, or service of an involved student as it was before the complaint if, in the judgment of the state board of education or its designee, not doing so constitutes a violation of the student's due process protections.~~

R 340.1853 General responsibilities of all agencies for processing complaints and investigations Investigation, report, and final decision of a state complaint.

Rule 153. (1) The term "complaint" is defined in R 340.1701a(e). All public educational agencies shall receive allegations of violations of state or federal regulations pertaining to special education. If the allegation is made orally, the recipient 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 formal complaint with the appropriate intermediate school district or with the department and to have that complaint investigated in accord with this part and procedures approved by the state board of education.~~

~~(b) Inform the person making the allegation that if he or she wishes to delay filing a formal complaint so that an informal resolution may be attempted, he or she retains the right to file a formal complaint 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 this part and the state board of education's procedures pertaining to complaints and offer to assist the person to file the complaint~~ **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) A person claiming to be acting on behalf of a complainant may be required to provide evidence of that authority~~ **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) Complaints are initially investigated by the intermediate school district. At its discretion, the department, for good cause shown, may initiate a complaint or may conduct the initial investigation of the complaint instead of requiring the intermediate school district to investigate the complaint initially~~ **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) A time limit of 60 calendar days after a complaint is filed is allotted for the intermediate school district to complete the investigation responsibilities under R 340.1851 and for the department to complete its review as specified in R 340.1852~~ **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) An extension of time specified in this part may be granted by the department only if exceptional circumstances exist with respect to a particular complaint. A denial of an extension request is final~~ **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 Rescinded. 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 documenting that the violation is corrected within the time line specified in the corrective action.

R 340.1855 Failure to comply with corrective action; sanctions.

Rule 155 (1) If a public agency fails to correct known violations of law, 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.