Michigan Administrative Rules for Special Education (MARSE) With Related IDEA Federal Regulations

MARSE (October 2015)

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Michigan Administrative Rules for Special Education (MARSE) With Related IDEA Federal Regulations

This document includes all *Michigan Administrative Rules for Special Education* with related IDEA federal regulations, when appropriate.

Part 1: General Provisions
MARSE Rules 340.1701 – 340.1717

MARSE R 340.1701 Assurance of compliance.
Rule 1.

All public agencies in the state, as those agencies are defined at 34 C.F.R. §300.33 of the regulations implementing the individuals with disabilities education act, 20 U.S.C. chapter 33, §1400 et seq., shall comply with these rules; all provisions of the state's application for federal funds under part B and part C of the individuals with disabilities education act, 20 U.S.C. chapter 33, §1400 et seq.; the requirements of part B and part C of the individuals with disabilities education act; and the regulations implementing the individuals with disabilities education act, 34 C.F.R. part 300 and 34 part 303, which are adopted by reference in these rules. Copies are available, at cost, from the Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001 or from the Center for Educational Networking, 6412 Centurion Drive, Suite 130, Lansing, MI 48917 or toll free at (888) 463-7656.

Related IDEA Federal Regulation

§ 300.2 Applicability of this part to State and local agencies.

(a) States. This part applies to each State that receives payments under Part B of the Act, as defined in § 300.4.

(b) Public agencies within the State. The provisions of this part—

(1) Apply to all political subdivisions of the State that are involved in the education of children with disabilities, including:

(i) The State educational agency (SEA).

(ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not

otherwise included as LEAs or ESAs and are not a school of an LEA or ESA.

(iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness).

(iv) State and local juvenile and adult correctional facilities; and

(2) Are binding on each public agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act.

(c) Private schools and facilities. Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities—

(1) Referred to or placed in private schools and facilities by that public agency; or

(2) Placed in private schools by their parents under the provisions of § 300.148.

(Authority: 20 U.S.C. 1412)

MARSE R 340.1701a Definitions; A to D.
Rule 1a.

As used in these rules:

(a) "Adaptive behavior" means a student's ability to perform the social roles appropriate for a person of his or her age and gender in a manner that meets the expectations of home, culture, school, neighborhood, and other relevant groups in which he or she participates.

(b) "Agency" means a public or private entity or organization, including the local school district, public school academy, intermediate school district, the department, and any other political subdivision of the state that is responsible for providing education or services to students with disabilities.

(c) "Complaint" means a written and signed allegation that includes the facts on which the allegation is based, by an individual or an organization, that there is a violation of any of the following:

(i) Any current provision of these rules.

(ii) The revised school code, 1976 PA 451, MCL 380.1 et seq., as it pertains to special education programs and services.

(iii) The individuals with disabilities education act, 20 U.S.C., chapter 33, §1400 et seq., and the regulations implementing the act, 34 C.F.R. part 300 and 34 C.F.R. part 303.

(iv) An intermediate school district plan.

(v) An individualized education program team report, administrative law judge decision, or court decision regarding special education programs or services.

(vi) The state application for federal funds under the individuals with disabilities education act.

(d) "Department" means the state department of education.

(e) "Departmentalize" means a delivery system in which 2 or more special education teachers teach groups of students with disabilities by instructional content areas.

Related IDEA Federal Regulations

§ 300.5 Assistive technology device.

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device.

(Authority: 20 U.S.C. 1401(1))

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§ 300.6 Assistive technology service.

Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

(a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

(Authority: 20 U.S.C. 1401(2))

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§ 300.7 Charter school.

Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA).

(Authority: 20 U.S.C. 7221i(1))

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§ 300.8(a) Child with a disability.

(a) General.

(1) Child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as ''emotional disturbance''), an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)

(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with § 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

§ 300.9 Consent.

Consent means that—

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c)

(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(Authority: 20 U.S.C. 1414(a)(1)(D))

§ 300.10 Core academic subjects.

Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(Authority: 20 U.S.C. 1401(4))

§ 300.11 Day; business day; school day.

(a) Day means calendar day unless otherwise indicated as business day or school day.

(b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in § 300.148(d)(1)(ii)).

(c)

(1) School day means any day, including a partial day that children are in attendance at school for instructional purposes.

(2) School day has the same meaning for all children in school, including children with and without disabilities.

(Authority: 20 U.S.C. 1221e–3)

§ 300.12 Educational service agency.

Educational service agency means—

(a) A regional public multiservice agency—

(1) Authorized by State law to develop, manage, and provide services or programs to LEAs;

(2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State;

(b) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and

(c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.

(Authority: 20 U.S.C. 1401(5))

§ 300.17 Free appropriate public education.

Free appropriate public education or FAPE means special education and related services that—

(a) Are provided at public expense, under public supervision and direction, and without charge;

(b) Meet the standards of the SEA, including the requirements of this part;

(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

(Authority: 20 U.S.C. 1401(9))

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§ 300.101 Free appropriate public education (FAPE).

(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d).

(b) FAPE for children beginning at age 3.

(1) Each State must ensure that—

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with § 300.323(b).

(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

(c) Children advancing from grade to grade.

(1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

(Authority: 20 U.S.C. 1412(a)(1)(A))

MARSE R 340.1701b Definitions; I to P.
Rule 1b.

As used in these rules:

(a) "Instructional services" means services provided by teaching personnel that are specially designed to meet the unique needs of a student with a disability. These may be provided by any of the following:
  (i) An early childhood special education teacher under R 340.1755.
  (ii) A teacher consultant under R 340.1749.
  (iii) A teacher of the speech and language impaired under R 340.1745.
  (iv) A teacher providing instruction to students with disabilities who are homebound or hospitalized.
  (v) A teacher providing instruction to students who are placed in juvenile detention facilities under R 340.1757.

(b) "Multidisciplinary evaluation team" means a minimum of 2 persons who are responsible for evaluating a student suspected of having a disability. The team shall include at least 1 special education teacher or other specialist who has knowledge of the suspected disability.

(c) "Occupational therapy" means therapy provided by an occupational therapist or an occupational therapy assistant who provides therapy under the supervision of a licensed occupational therapist. Occupational therapist and occupational therapy assistants are licensed by the state of Michigan under 1978 PA 368, MCL 333.1101 et seq.

(d) "Parent" means any of the following:
  (i) A biological or adoptive parent of a child.
  (ii) A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent.
  (iii) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state.
  (iv) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare.
  (v) A surrogate parent who has been appointed in accordance with R 340.1725f.

(vi) Except as provided in paragraph (vii) of this subdivision, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraphs (i) to (v) of this subdivision to act as a parent, shall be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(vii) If a judicial decree or order identifies a specific person or persons under paragraphs (i) to (iv) of this subdivision to act as the parent of a child, or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent.

(viii) The affected student or youth with a disability when the student or youth with a disability reaches 18 years of age, if a legal guardian has not been appointed by appropriate court proceedings.

(e) "Parent advisory committee" means a committee of parents of students with disabilities of a particular intermediate school district appointed by the board of that district under R 340.1838.

(f) "Physical therapy" means therapy prescribed by a physician and provided by a therapist who is licensed by the state of Michigan under 1978 PA 368, MCL 333.1101 et seq. or a physical therapy assistant who provides therapy under the supervision of a licensed physical therapist.

Related IDEA Federal Regulations

§ 300.22 Individualized education program.

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324.

(Authority: 20 U.S.C. 1401(14))

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§ 300.29 Native language.

(a) Native language, when used with respect to an individual who is limited English proficient, means the following:

(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.

(2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

(Authority: 20 U.S.C. 1401(20))

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§ 300.30 Parent.

(a) Parent means—

(1) A biological or adoptive parent of a child;

(2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;

(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(5) A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act.

(b)

(1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the ''parent'' of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the ''parent'' for purposes of this section.

(Authority: 20 U.S.C. 1401(23))

§ 300.37 Services plan.

Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with § 300.132, and is developed and implemented in accordance with §§ 300.137 through 300.139.

(Authority: 20 U.S.C. 1412(a)(10)(A))

§ 300.45 Ward of the State.

(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is—
   (1) A foster child;
   (2) A ward of the State; or
   (3) In the custody of a public child welfare agency.

(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in § 300.30.

(Authority: 20 U.S.C. 1401(36)

§ 300.107 Nonacademic services.

The State must ensure the following:

(a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with

disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available. (Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1412(a)(1))

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§ 300.129 State responsibility regarding children in private schools.

The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§ 300.130 through 300.148. (Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1412(a)(10))

MARSE R 340.1701c Definitions; R to Y.
Rule 1c.

As used in these rules:

(a) "Related services" means services defined at 34 C.F.R. §300.34 and ancillary services as defined in 1976 PA 451, MCL 380.1 et seq., which is available for public review at the department and at intermediate school districts.

(b) "Services" means instructional or related services as defined in these rules.

(c) "Special education" means specially designed instruction, at no cost to the parents, to meet the unique educational needs of the student with a disability and to develop the student's maximum potential. Special education includes instructional services defined in R 340.1701b(a) and related services.

(d) "Youth placed in a juvenile detention facility" means a student who is placed by the court in a detention facility for juvenile delinquents and who is not attending a regular school program due to court order.

Related IDEA Federal Regulations

§ 300.34 Related services.

(a) General. Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) Exception; services that apply to children with surgically implanted devices, including cochlear implants.

(1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in § 300.113(b).

(c) Individual related services terms defined. The terms used in this definition are defined as follows:

(1) Audiology includes—

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) Counseling services means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) Early identification and assessment of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) Interpreting services includes—

(i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for children who are deaf-blind.

(5) Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6) Occupational therapy—

(i) Means services provided by a qualified occupational therapist; and

(ii) Includes—

(A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

(7) Orientation and mobility services—

(i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and

(ii) Includes teaching children the following, as appropriate:

(A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

(C) To understand and use remaining vision and distance low vision aids; and

(D) Other concepts, techniques, and tools.

(8)

(i) Parent counseling and training means assisting parents in understanding the special needs of their child;

(ii) Providing parents with information about child development; and

(iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(9) Physical therapy means services provided by a qualified physical therapist.

(10) Psychological services includes—

(i) Administering psychological and educational tests, and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(iv) Consulting with other staff members in planning school programs to meet the special educational needs of children

as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(vi) Assisting in developing positive behavioral intervention strategies.

(11) Recreation includes—

(i) Assessment of leisure function;

(ii) Therapeutic recreation services;

(iii) Recreation programs in schools and community agencies; and

(iv) Leisure education.

(12) Rehabilitation counseling services means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

(13) School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(14) Social work services in schools includes—

(i) Preparing a social or developmental history on a child with a disability;

(ii) Group and individual counseling with the child and family;

(iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(v) Assisting in developing positive behavioral intervention strategies.

(15) Speech-language pathology services includes—

(i) Identification of children with speech or language impairments;

(ii) Diagnosis and appraisal of specific speech or language impairments;

(iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(16) Transportation includes—

(i) Travel to and from school and between schools;

(ii) Travel in and around school buildings; and

(iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

(Authority: 20 U.S.C. 1401(26))

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§ 300.39 Special education.

(a) General.

(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—

(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

(ii) Travel training; and

(iii) Vocational education.

(b) Individual special education terms defined. The terms in this definition are defined as follows:

(1) At no cost means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) Physical education means—

(i) The development of—

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

(ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to—

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(Authority: 20 U.S.C. 1401(29))

§ 300.43 Transition services.

(a) Transition services means a coordinated set of activities for a child with a disability that—

(1) Is designed to be within a results oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

(Authority: 20 U.S.C. 1401(34))

MARSE R 340.1702 "Student with a disability" defined. Rule 2.

"Student with a disability" means a person who has been evaluated according to the individuals with disabilities education act and these rules, and is determined by an individualized education program team, an individualized family service plan team, or an administrative law judge to have 1 or more of the impairments specified in this part that necessitates special education or related services, or both, who is not more than 25 years of age as of September 1 of the school year of enrollment, and who has not graduated from high school. A student who reaches

the age of 26 years after September 1 is a "student with a disability" and entitled to continue a special education program or service until the end of that school year.

Related IDEA Federal Regulation

§ 300.8 Child with a disability.

(a) General.

(1) Child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as ‘‘emotional disturbance’’), an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

(2)

(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.

(ii) If, consistent with § 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under paragraph (a)(1) of this section.

(b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in § 300.111(b), include a child—

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

(Authority: 20 U.S.C. 1401(3); 1401(30))

MARSE R 340.1705: Cognitive impairment; determination. Rule 5.

(1) Cognitive impairment shall be manifested during the developmental period and be determined through the demonstration of all of the following behavioral characteristics:
   (a) Development at a rate at or below approximately 2 standard deviations below the mean as determined through intellectual assessment.
   (b) Scores approximately within the lowest 6 percentiles on a standardized test in reading and arithmetic. This requirement will not apply if the student is not of an age, grade, or mental age appropriate for formal or standardized achievement tests.
   (c) Lack of development primarily in the cognitive domain.
   (d) Impairment of adaptive behavior.
   (e) Adversely affects a student's educational performance.

(2) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include a psychologist.

Related IDEA Federal Regulation

§ 300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:
   (6) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

MARSE R 340.1706 Emotional impairment; determination; evaluation report
Rule 6.

(1) Emotional impairment shall be determined through manifestation of behavioral problems primarily in the affective domain, over an extended period of time, which adversely affect the student's education to the extent that the student cannot profit from learning experiences without special education support. The problems result in behaviors manifested by 1 or more of the following characteristics:
   (a) Inability to build or maintain satisfactory interpersonal relationships within the school environment.
   (b) Inappropriate types of behavior or feelings under normal circumstances.
   (c) General pervasive mood of unhappiness or depression.
   (d) Tendency to develop physical symptoms or fears associated with personal or school problems.

(2) Emotional impairment also includes students who, in addition to the characteristics specified in subrule (1) of this rule, exhibit maladaptive behaviors related to schizophrenia or similar disorders. The term "emotional impairment" does not include persons who are socially maladjusted, unless it is determined that the persons have an emotional impairment.

(3) Emotional impairment does not include students whose behaviors are primarily the result of intellectual, sensory, or health factors.

(4) When evaluating a student suspected of having an emotional impairment, the multidisciplinary evaluation team report shall include documentation of all of the following:
   (a) The student's performance in the educational setting and in other settings, such as adaptive behavior within the broader community.
   (b) The systematic observation of the behaviors of primary concern which interfere with educational and social needs.
   (c) The intervention strategies used to improve the behaviors and the length of time the strategies were utilized.
   (d) Relevant medical information, if any.

(5) A determination of impairment shall be based on data provided by a multidisciplinary evaluation team, which shall include a full and individual evaluation by both of the following:

(a) A psychologist or psychiatrist.

(b) A school social worker.

Related IDEA Federal Regulation

§ 300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(4)

(i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

MARSE R 340.1707 Hearing impairment explained; determination. Rule 7.

(1) The term "hearing impairment" is a generic term which includes both students who are deaf and those who are hard of hearing and refers to students with any type or degree of hearing loss that interferes with development or adversely affects educational performance. "Deafness" means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification. The term "hard of hearing" refers to students with hearing

impairment who have permanent or fluctuating hearing loss which is less severe than the hearing loss of students who are deaf and which generally permits the use of the auditory channel as the primary means of developing speech and language skills.

(2) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include an audiologist and an otolaryngologist or otologist.

Related IDEA Federal Regulation

§ 300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

MARSE R 340.1708 Visual impairment explained; determination. Rule 8.

(1) A visual impairment shall be determined through the manifestation of both of the following:

(a) A visual impairment which, even with correction, interferes with development or which adversely affects educational performance. Visual impairment includes both partial sight and blindness.

(b) One or more of the following:

(i) A central visual acuity for near or far point vision of 20/70 or less in the better eye after routine refractive correction.

(ii) A peripheral field of vision restricted to not more than 20 degrees.

(iii) A diagnosed progressively deteriorating eye condition.

(2) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include an ophthalmologist or optometrist.

(3) If a student cannot be tested accurately for acuity, then functional visual assessments conducted by a teacher certified in visual impairment may be used in addition to the medical evaluation for determination of impairment.

(4) For students with visual impairment who have a visual acuity of 20/200 or less after routine refractive correction, or who have a peripheral field of vision restricted to not more than 20 degrees, an evaluation by an orientation and mobility specialist shall be conducted. The orientation and mobility specialist shall also include in the report a set of recommended procedures to be used by a mobility specialist or a teacher of students with visual impairment in conducting orientation and mobility training activities.

Related IDEA Federal Regulation

§ 300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

MARSE R 340.1709 "Physical impairment" defined; determination. Rule 9.

(1) "Physical impairment" means severe orthopedic impairment that adversely affects a student's educational performance.

(2) A determination of disability shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include assessment data from 1 of the following persons:

(a) An orthopedic surgeon.

(b) An internist.

(c) A neurologist.

(d) A pediatrician.

(e) A family physician or any other approved physician as defined in 1978 PA 368, MCL 333.1101 et seq.

Related IDEA Federal Regulation

§ 300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

MARSE R 340.1709a "Other heath impairment" defined; determination. Rule 9a.

(1) "Other health impairment" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, which results in limited alertness with respect to the educational environment and to which both of the following provisions apply:

(a) Is due to chronic or acute health problems such as any of the following:

(i) Asthma.
(ii) Attention deficit disorder.
(iii) Attention deficit hyperactivity disorder.
(iv) Diabetes.
(v) Epilepsy.
(vi) A heart condition.
(vii) Hemophilia.
(viii) Lead poisoning.
(ix) Leukemia.
(x) Nephritis.
(xi) Rheumatic fever.
(xii) Sickle cell anemia.

(b) The impairment adversely affects a student's educational performance.

(2) A determination of disability shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include 1 of the following persons:

(a) An orthopedic surgeon.

(b) An internist.

(c) A neurologist.

(d) A pediatrician.

(e) A family physician or any other approved physician as defined in 1978 PA 368, MCL 333.1101 et seq.

Related IDEA Federal Regulations

§ 300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) (ii) Adversely affects a child's educational performance.

MARSE R 340.1710 "Speech and language impairment" defined; determination.
Rule 10.

(1) A "speech and language impairment" means a communication disorder that adversely affects educational performance, such as a language impairment, articulation impairment, fluency impairment, or voice impairment.

(2) A communication disorder shall be determined through the manifestation of 1 or more of the following speech and language impairments that adversely affects educational performance:

(a) A language impairment which interferes with the student's ability to understand and use language effectively and which includes 1 or more of the following:
  (i) Phonology.
  (ii) Morphology.
  (iii) Syntax.
  (iv) Semantics.
  (v) Pragmatics.
(b) Articulation impairment, including omissions, substitutions, or distortions of sound, persisting beyond the age at which maturation alone might be expected to correct the deviation.
(c) Fluency impairment, including an abnormal rate of speaking, speech interruptions, and repetition of sounds, words, phrases, or sentences, that interferes with effective communication.
(d) Voice impairment, including inappropriate pitch, loudness, or voice quality.

(3) Any impairment under subrule (2)(a) of this rule shall be evidenced by both of the following:
(a) A spontaneous language sample demonstrating inadequate language functioning.
(b) Test results on not less than 2 standardized assessment instruments or 2 subtests designed to determine language functioning which indicate inappropriate language functioning for the student's age.

(4) A student who has a communication disorder, but whose primary disability is other than speech and language may be eligible for speech and language services under R 340.1745(a).

(5) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include a teacher of students with speech and language impairment under R 340.1796 or a speech and language pathologist qualified under R 340.1792.

Related IDEA Federal Regulation

§ 300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

MARSE R 340.1711 "Early childhood development delay" defined; determination.
Rule 11.

(1) "Early childhood developmental delay" means a child through 7 years of age whose primary delay cannot be differentiated through existing criteria within R 340.1705 to R 340.1710 or R 340.1713 to R 340.1716 and who manifests a delay in 1 or more areas of development equal to or greater than 1/2 of the expected development. This definition does not preclude identification of a child through existing criteria within R 340.1705 to R 340.1710 or R 340.1713 to R 340.1716.

(2) A determination of early childhood developmental delay shall be based upon a full and individual evaluation by a multidisciplinary evaluation team.

Related IDEA Federal Regulation

§ 300.8 Child with a disability.

(b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in § 300.111(b), include a child—

(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(2) Who, by reason thereof, needs special education and related services.

MARSE R 340.1713 Specific learning disability defined; determination. Rule 13.

(a) "Specific learning disability" means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of cognitive impairment, of emotional impairment, of autism spectrum disorder, or of environmental, cultural, or economic disadvantage.

(b) In determining whether a student has a learning disability, the state shall:

(a) Not require the use of a severe discrepancy between intellectual ability and achievement.

(b) Permit the use of a process based on the child's response to scientific, research-based intervention.

(c) Permit the use of other alternative research-based procedures.

(3) A determination of learning disability shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include at least both of the following:

(a) The student's general education teacher or, if the student does not have a general education teacher, a general education teacher qualified to teach a student of his or her age or, for a child of less than school age, an individual qualified by the state educational agency to teach a child of his or her age.

(b) At least 1 person qualified to conduct individual diagnostic examinations of children and who can interpret the instructional implications of evaluation results, such as a school psychologist, an authorized provider of speech and language under R 340.1745(d), or a teacher consultant.

Related IDEA Federal Regulations

§ 300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(10) Specific learning disability—

(i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

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§ 300.35 Scientifically based research.

Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.

(Authority: 20 U.S.C. 1411(e)(2)(C)(xi))

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§ 300.307 Specific learning disabilities.

(a) General. A State must adopt, consistent with § 300.309, criteria for determining whether a child has a specific learning disability as defined in § 300.8(c)(10). In addition, the criteria adopted by the State—

(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10);

(2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in § 300.8(c)(10).

(b) Consistency with State criteria. A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

(Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))

§ 300.308 Additional group members.

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in § 300.8, must be made by the child's parents and a team of qualified professionals, which must include—

(a)
- (1) The child's regular teacher; or
- (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
- (3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))

§ 300.309 Determining the existence of a specific learning disability.

(a) The group described in § 300.306 may determine that a child has a specific learning disability, as defined in § 300.8(c)(10), if—

- (1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:
  - (i) Oral expression.
  - (ii) Listening comprehension.
  - (iii) Written expression.
  - (iv) Basic reading skill.
  - (v) Reading fluency skills.
  - (vi) Reading comprehension.
  - (vii) Mathematics calculation.
  - (viii) Mathematics problem solving.
- (2)
  - (i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when

using a process based on the child's response to scientific, research-based intervention; or

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§ 300.304 and 300.305; and

(3) The group determines that its findings under paragraphs (a)(1) and (2) of this section are not primarily the result of—

(i) A visual, hearing, or motor disability;

(ii) Mental retardation;

(iii) Emotional disturbance;

(iv) Cultural factors;

(v) Environmental or economic disadvantage; or

(vi) Limited English proficiency.

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in §§ 300.304 through 300.306—

(1) Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the time frames described in §§ 300.301 and 300.303, unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in § 300.306(a)(1)—

(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and

(2) Whenever a child is referred for an evaluation.

(Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))

§ 300.310 Observation.

(a) The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

(b) The group described in § 300.306(a)(1), in determining whether a child has a specific learning disability, must decide to—

(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or

(2) Have at least one member of the group described in § 300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with § 300.300(a), is obtained.

(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))

§ 300.311 Specific documentation for the eligibility determination.

(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of—

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(1);

(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

(4) The educationally relevant medical findings, if any;

(5) Whether—

(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and

(ii)

(A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with § 300.309(a)(2)(i); or

(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with § 300.309(a)(2)(ii);

(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention—

(i) The instructional strategies used and the student-centered data collected; and

(ii) (ii) The documentation that the child's parents were notified about—

(A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

(B) Strategies for increasing the child's rate of learning; and

(C) The parents' right to request an evaluation.

(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

(Authority: 20 U.S.C. 1221e–3; 1401(30); 1414(b)(6))

MARSE R 340.1714 Severe multiple impairment; determination. Rule 14.

(1) Students with severe multiple impairments shall be determined through the manifestation of either of the following:

(a) Development at a rate of 2 to 3 standard deviations below the mean and 2 or more of the following conditions:

(i) A hearing impairment so severe that the auditory channel is not the primary means of developing speech and language skills.

(ii) A visual impairment so severe that the visual channel is not sufficient to guide independent mobility.

(iii) A physical impairment so severe that activities of daily living cannot be achieved without assistance.

(iv) A health impairment so severe that the student is medically at risk.

(b) Development at a rate of 3 or more standard deviations below the mean or students for whom evaluation instruments do not provide a valid measure of cognitive ability and 1 or more of the following conditions:

(i) A hearing impairment so severe that the auditory channel is not the primary means of developing speech and language skills.

(ii) A visual impairment so severe that the visual channel is not sufficient to guide independent mobility.

(iii) A physical impairment so severe that activities of daily living cannot be achieved without assistance.

(iv) A health impairment so severe that the student is medically at risk.

(2) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include a psychologist and, depending upon the disabilities in the physical domain, the multidisciplinary evaluation team participants required in R 340.1707, R 340.1708, or R 340.1709, R 340.1709a, or R 340.1716.

Related IDEA Federal Regulation

§ 300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(7) Multiple disabilities means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

MARSE R 340.1715 Autism spectrum disorder defined; determination. Rule 15.

(1) Autism spectrum disorder is considered a lifelong developmental disability that adversely affects a student's educational performance in 1 or more of the following performance areas:

(a) Academic.

(b) Behavioral.

(c) Social.

Autism spectrum disorder is typically manifested before 36 months of age. A child who first manifests the characteristics after age 3 may also meet criteria. Autism spectrum disorder is characterized by qualitative impairments in reciprocal social interactions, qualitative impairments in communication, and restricted range of interests/repetitive behavior.

(2) Determination for eligibility shall include all of the following:

(a) Qualitative impairments in reciprocal social interactions including at least 2 of the following areas:

(i) Marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction.

(ii) Failure to develop peer relationships appropriate to developmental level.

(iii) Marked impairment in spontaneous seeking to share enjoyment, interests, or achievements with other people, for example, by a lack of showing, bringing, or pointing out objects of interest.

(iv) Marked impairment in the areas of social or emotional reciprocity.

(b) Qualitative impairments in communication including at least 1 of the following:

(i) Delay in, or total lack of, the development of spoken language not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime.

(ii) Marked impairment in pragmatics or in the ability to initiate, sustain, or engage in reciprocal conversation with others.

(iii) Stereotyped and repetitive use of language or idiosyncratic language.

(iv) Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level.

(c) Restricted, repetitive, and stereotyped behaviors including at least 1 of the following:

(i) Encompassing preoccupation with 1 or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus.

(ii) Apparently inflexible adherence to specific, nonfunctional routines or rituals.

(iii) Stereotyped and repetitive motor mannerisms, for example, hand or finger flapping or twisting, or complex whole-body movements.

(iv) Persistent preoccupation with parts of objects.

(3) Determination may include unusual or inconsistent response to sensory stimuli, in combination with subdivisions (a), (b), and (c) of subrule (2) of this rule.

(4) While autism spectrum disorder may exist concurrently with other diagnoses or areas of disability, to be eligible under this rule, there shall not be a primary diagnosis of schizophrenia or emotional impairment.

(5) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team including, at a minimum, a psychologist or psychiatrist, an authorized provider of speech and language under R 340.1745(d), and a school social worker.

Related IDEA Federal Regulation

§ 300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(1)

(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.

(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.

MARSE R 340.1716 "Traumatic brain injury" defined; determination. Rule 16.

(1) "Traumatic brain injury" means an acquired injury to the brain which is caused by an external physical force and which results in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairment in 1 or more of the following areas:

(a) Cognition.

(b) Language.

(c) Memory

(d) Attention.

(e) Reasoning.

(f) Behavior.

(g) Physical functions.

(h) Information processing.

(i) Speech.

(2) The term does not apply to brain injuries that are congenital or degenerative or to brain injuries induced by birth trauma.

(3) A determination of disability shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include an assessment from a family physician or any other approved physician as defined in 1978 PA 368, MCL 333.1101 et seq.

Related IDEA Federal Regulation

§ 300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

MARSE R 340.1717 Deaf-blindness defined; determination. Rule 17.

(1) Deaf-blindness means concomitant hearing impairment and visual impairment, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs without additional supports to address the unique needs specific to deaf-blindness. Deaf-blindness also means both of the following:

(a) Documented hearing and visual losses that, if considered individually, may not meet the requirements for visual impairment

or hearing impairment, but the combination of the losses affects educational performance.

(b) Such students function as if they have both a hearing and visual loss, based upon responses to auditory and visual stimuli in the environment, or during vision and hearing evaluations.

(2) A determination of the disability shall be based upon data provided by a multidisciplinary evaluation team which shall include assessment data from all of the following:

(a) Medical specialists such as any of the following:

(i) An ophthalmologist.

(ii) An optometrist.

(iii) An audiologist.

(iv) An otolaryngologist.

(v) An otologist.

(vi) A family physician or any other approved physician as defined in 1978 PA 368, MCL 333.1101 et seq.

(b) A teacher of students with visual impairment.

(c) A teacher of students with hearing impairment.

Related IDEA Federal Regulation

§ 300.8 Child with a disability.

(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:

(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

Part 2: Initial Evaluation, Time Lines, Individualized Education Program, District Responsibilities, and Due Process Procedures
MARSE Rules 340.1721 – 340.1725f

MARSE R 340.1721 Request for initial evaluation.
Rule 21.

Within 10 school days of receipt of a written request for an initial evaluation of a student suspected of having a disability, and before any formal evaluation designed to determine eligibility for special education programs and services, the public agency shall provide the parent with written notice consistent with 34 CFR § 300.503 and, when necessary shall request written consent to evaluate.

Related IDEA Federal Regulations

§ 300.300 Parental consent.

(a) Parental consent for initial evaluation.

(1)

(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under § 300.8 must, after providing notice consistent with §§ 300.503 and 300.504, obtain informed consent, consistent with § 300.9, from the parent of the child before conducting the evaluation.

(ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

(iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

(2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if—

(i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated in accordance with State law; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(3)

(i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

(ii) The public agency does not violate its obligation under § 300.111 and §§ 300.301 through 300.311 if it declines to pursue the evaluation.

(b) Parental consent for services.

(1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency—

(i) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516)

in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(iii) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child.

(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency—

(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with § 300.503 before ceasing the provision of special education and related services;

(ii) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(iv) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child for further provision of special education and related services.

(c) Parental consent for reevaluations.

(1) Subject to paragraph (c)(2) of this section, each public agency—

(i) Must obtain informed parental consent, in accordance with § 300.300(a)(1), prior to conducting any reevaluation of a child with a disability.

(ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.

(iii) The public agency does not violate its obligation under § 300.111 and §§ 300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that—

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

(d) Other consent requirements.

(1) Parental consent is not required before—

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(2) In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

(4)

(i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and

(ii) The public agency is not required to consider the child as eligible for services under §§ 300.132 through 300.144.

(5) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public

agency must document its attempts to obtain parental consent using the procedures in § 300.322(d).

(Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c))

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§ 300.504 Procedural safeguards notice.

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—

(1) Upon initial referral or parent request for evaluation;

(2) Upon receipt of the first State complaint under §§ 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year;

(3) In accordance with the discipline procedures in § 300.530(h); and

(4) Upon request by a parent.

(b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under § 300.148, §§ 300.151 through 300.153, § 300.300, §§ 300.502 through 300.503, §§ 300.505 through 300.518, § 300.520, §§ 300.530 through 300.536 and §§ 300.610 through 300.625 relating to—

(1) Independent educational evaluations;

(2) Prior written notice;

(3) Parental consent;

(4) Access to education records;

(5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including—

(i) The time period in which to file a complaint;

(ii) The opportunity for the agency to resolve the complaint; and

(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

(6) The availability of mediation;

(7) The child's placement during the pendency of any due process complaint;

(8) Procedures for students who are subject to placement in an interim alternative educational setting;
(9) Requirements for unilateral placement by parents of children in private schools at public expense;
(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
(11) State-level appeals (if applicable in the State);
(12) Civil actions, including the time period in which to file those actions; and
(13) Attorneys' fees.

(d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of § 300.503(c). (Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1415(d))

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§ 300.505 Electronic mail.

A parent of a child with a disability may elect to receive notices required by §§ 300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.

(Authority: 20 U.S.C. 1415(n))

MARSE R 340.1721a Initial evaluation.
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). In addition to the requirements in R 340.1705 to R 340.1717, the multidisciplinary evaluation team shall do all of the following:
(a) Complete a full and individual evaluation.
(b) Make a recommendation of eligibility and prepare a written report to be presented to the individualized education program team by the designated multidisciplinary evaluation team member who can explain the instructional implication of evaluation results. The report shall include information needed by the individualized education program team to determine all of the following:

(i) Eligibility.

(ii) A student's present level of academic achievement and functional performance.

(iii) The educational needs of the student.

(2) Special education personnel who are authorized to conduct evaluations of students suspected of having a disability may provide consultation to general education personnel.

Related IDEA Federal Regulations

§ 300.15 Evaluation.

Evaluation means procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

(Authority: 20 U.S.C. 1414(a) (c))

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§ 300.301 Initial evaluations.

(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

(b) Request for initial evaluation. Consistent with the consent requirements in § 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation. The initial evaluation—

(1)

(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and

(2) Must consist of procedures—

(i) To determine if the child is a child with a disability under § 300.8; and

(ii) To determine the educational needs of the child.

(d) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under § 300.8.

(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

(Authority: 20 U.S.C. 1414(a))

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§ 300.302 Screening for instructional purposes is not evaluation.

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

(Authority: 20 U.S.C. 1414(a)(1)(E))

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§ 300.303 Reevaluations.

(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311—

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section—

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

(Authority: 20 U.S.C. 1414(a)(2))

§ 300.304 Evaluation procedures.

(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) Conduct of evaluation. In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under § 300.8; and

(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) Other evaluation procedures. Each public agency must ensure that—

(1) Assessments and other evaluation materials used to assess a child under this part—

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

(Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B))

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§ 300.305 Additional requirements for evaluations and reevaluations.

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i)

(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii)

(A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

(d) Requirements if additional data are not needed.

(1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of'—

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.

(e) Evaluations before change in eligibility.

(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e) 1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

(Authority: 20 U.S.C. 1414(c))

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§ 300.306 Determination of eligibility.

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(1) General. Upon completion of the administration of assessments and other evaluation measures—

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(2) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part—

(1) If the determinant factor for that determination is—

(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under § 300.8(a).

(3) Procedures for determining eligibility and educational need.

(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.8, and the educational needs of the child, each public agency must—

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.320 through 300.324.

(Authority: 20 U.S.C. 1414(b)(4) and (5))

MARSE R 340.1721b Time lines.
Rule 21b.

(1) Within 10 school days of receipt of a written request for any evaluation, the public agency shall provide the parent with written notice consistent with 34 CFR §300.503 and shall request written parental consent to evaluate. The time from receipt of parental consent for an evaluation to the notice of an offer of a free appropriate public education or the determination of ineligibility shall not be more than 30 school days. This time line begins upon receipt of the signed parental consent by the public agency requesting the consent. This time line may be extended if agreed to by the parent and public agency. Any extension to this time line shall be both of the following:

(a) In writing.

(b) Measured in school days.

(2) The parent has 10 school days after receipt of the notice of an initial offer of a free appropriate public education to provide the public agency with written parental consent to provide initial special education programs and services.

(3) Within 7 school days from the date of the individualized education program team meeting, the public agency shall provide the parent with the notice of an offer of a free appropriate public education or determination of ineligibility. The public agency shall document mode and date of delivery. The notice shall identify where the programs and services are to be provided and when the individualized education program begins.

(4) Unless a parent has filed an appeal under R 340.1724f, the public agency, as defined under 34 CFR § 300. 33, shall initiate a proposed special education individualized education program as soon as possible and not more than 15 school days after the parent's receipt of written notification under R 340.1721b(3), or not more than 15 school days after receipt of written parental consent under R 340.1721b(2). The parties may agree to a later initiation date if the later date is clearly identified in the individualized education program. An initiation date later than 15 school days shall not be used to deny or delay programs or services because they are unavailable and shall not be used for purposes of administrative convenience.

(5) For students with an individualized education program in effect at a previous public agency who transfer public agencies within the same school year, the new public agency shall immediately provide a free appropriate public education. A decision regarding implementation of an individualized education program in accordance with 4 CFR §300.323 shall be made within 30 school days of enrollment.

Related IDEA Federal Regulation

§ 300.323 When IEP must be in effect.

(a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320.

(b) IEP or IFSP for children aged three through five.

(1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is—

(i) Consistent with State policy; and

(ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must—

(i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and

(ii) If the parents choose an IFSP, obtain written informed consent from the parents.

(c) Initial IEPs; provision of services. Each public agency must ensure that—

(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

(d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that—

(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(2) (2) Each teacher and provider described in paragraph (d)(1) of this section is informed of—

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

(e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either—

(1) Adopts the child's IEP from the previous public agency; or

(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§ 300.320 through 300.324.

(f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency—

(1) Conducts an evaluation pursuant to §§ 300.304 through 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§ 300.320 through 300.324.

(g) Transmittal of records. To facilitate the transition for a child described in paragraphs (e) and (f) of this section—

(1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and

(2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

(Authority: 20 U.S.C. 1414(d)(2)(A)–(C))

MARSE R 340.1721e Individualized education program.
Rule 21e.

(1) An individualized education program shall be developed in accordance with 34 CFR part 300 and shall include all of the following in writing:

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

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

(c) For children age 3 through 5, a statement of the child's socialization needs and ability to participate and progress in developmentally appropriate activities.

(2) 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 (2)(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.

(3) 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.

(4) The individualized education program team shall determine the programs and services for a student with a disability in accordance with 34 CFR part 300. The individualized education program shall not be restricted to the programs and services available.

(5) The Michigan school for the deaf shall be considered a part of the total continuum of services for students who are deaf or hard of hearing. 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.

(6) The school district of residence is responsible for conducting the initial individualized education program team meeting involving a student in its district and shall conduct, or authorize the operating district to conduct, each subsequent individualized education program team meeting at a mutually agreed upon time and place.

(7) Upon request of the parent, a representative of the school district of residence shall be invited to attend the individualized education program team meeting if the district of residence has authorized the operating district to conduct each subsequent individualized education program team meeting.

Related IDEA Federal Regulations

§ 300.22 Individualized education program team.

Individualized education program or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§ 300.320 through 300.324.

(Authority: 20 U.S.C. 1401(14))

§ 300.23 Individualized education program team.

Individualized education program team or IEP Team means a group of individuals described in § 300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

(Authority: 20 U.S.C. 1414(d)(1)(B))

§ 300.35 Scientifically based research.

Scientifically based research has the meaning given the term in section 9101(37) of the ESEA.

(Authority: 20 U.S.C. 1411(e)(2)(C)(xi)

§ 300.42 Supplementary aids and services.

Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§ 300.114 through 300.116.

(Authority: 20 U.S.C. 1401(33)

§ 300.321 IEP Team.

(a) General. The public agency must ensure that the IEP Team for each child with a disability includes—

(1) The parents of the child;

(2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

(3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;

(4) A representative of the public agency who—

(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) Is knowledgeable about the general education curriculum; and

(iii) Is knowledgeable about the availability of resources of the public agency.

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;

(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) Whenever appropriate, the child with a disability.

(b) Transition services participants.

(1) In accordance with paragraph (a)(7) of this section, the public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under § 300.320(b).

(2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.

(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

(c) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team.

(d) Designating a public agency representative. A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria in paragraph (a)(4) of this section are satisfied.

(e) IEP Team attendance.

(1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(f) Initial IEP Team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

(Authority: 20 U.S.C. 1414(d)(1)(B)–(d)(1)(D))

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§ 300.322 Parent participation.

(a) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are

present at each IEP Team meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) Information provided to parents.

(1) The notice required under paragraph (a)(1) of this section must—

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in § 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and § 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must—

(i) Indicate—

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with § 300.320(b); and

(B) That the agency will invite the student; and

(ii) Identify any other agency that will be invited to send a representative.

(c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with § 300.328 (related to alternative means of meeting participation).

(d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as—

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent.

(Authority: 20 U.S.C. 1414(d)(1)(B)(i))

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§ 300.324 Development, review, and revision of IEP.

(a) Development of IEP—

(1) General. In developing each child's IEP, the IEP Team must consider—

(i) The strengths of the child;

(ii) The concerns of the parents for enhancing the education of their child;

(iii) The results of the initial or most recent evaluation of the child; and

(iv) The academic, developmental, and functional needs of the child.

(2) Consideration of special factors. The IEP Team must—

(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the

child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) Consider whether the child needs assistive technology devices and services.

(3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of—

(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(ii) supplementary aids and services, program modifications, and support for school personnel consistent with § 300.320(a)(4).

(4) Agreement.

(i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

(ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.

(5) Consolidation of IEP Team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a (4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(b) Review and revision of IEPs—

(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—

(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address—

(A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under § 300.303;

(C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);

(D) The child's anticipated needs; or

(E) Other matters.

(2) Consideration of special factors. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

(3) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

(c) Failure to meet transition objectives—

(1) Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with § 300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(2) Construction. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

(d) Children with disabilities in adult prisons—

(1) Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

(i) The requirements contained in section 612(a)(16) of the Act and § 300.320(a)(6) (relating to participation of children with disabilities in general assessments).

(ii) The requirements in § 300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) Modifications of IEP or placement.

(i) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of §§ 300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3), (4)(B), and (7); and 1414(e))

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§ 300.328 Alternative means of meeting participation.

When conducting IEP Team meetings and placement meetings pursuant to this subpart, and subpart E of this part, and carrying out administrative matters under section 615 of the Act (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a public agency may agree

to use alternative means of meeting participation, such as video conferences and conference calls.

(Authority: 20 U.S.C. 1414(f))

MARSE R 340.1722 District responsibilities.
Rule 22.

(1) The superintendent or his or her designee shall appoint a staff person to be responsible for the implementation of the individualized education program, including services provided by other agencies.

(2) The staff person responsible for the implementation of the individualized education program shall be either of the following:

(a) The principal of the building where the primary educational program is provided to the student with an individualized education program.

(b) Another staff person who is generally accessible to the staff and who will be working with the student.

(g) Each public agency shall provide special education and related services to a student in accordance with the student's individualized education program.

Related IDEA Federal Regulations

§ 300.105 Assistive technology.

(a) Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in §§ 300.5 and 300.6, respectively, are made available to a child with a disability if required as a part of the child's—

(1) Special education under § 300.36;

(2) Related services under § 300.34; or

(3) Supplementary aids and services under §§ 300.38 and 300.114(a)(2)(ii).

(b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE. (Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(B)(i))

§ 300.114 LRE requirements.

(a) General.

(1) Except as provided in § 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§ 300.115 through 300.120.

(2) Each public agency must ensure that—

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) Additional requirement—State funding mechanism—

(1) General.

(i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and

(ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

(2) Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph. (Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.115 Continuum of alternative placements.

(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must—

(1) Include the alternative placements listed in the definition of special education under § 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. (Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1412(a)(5))

§ 300.116 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—

(a) The placement decision—

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;

(b) The child's placement—

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1412(a)(5))

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§ 300.117 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings. (Approved by the Office of Management and Budget under control number 1820–0030)

(Authority: 20 U.S.C. 1412(a)(5))

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§ 300.327 Educational placements.

Consistent with § 300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(Authority: 20 U.S.C. 1414(e))

MARSE R 340.1723c Right to independent educational evaluation. Rule 23c.

(1) Each public agency shall provide parents with information about independent educational evaluations at public expense. The information shall include all of the following:
   (a) Criteria regarding credentials for qualified examiners.
   (b) Suggested sources and locations.
   (c) Procedures for reimbursement.
   (d) Reasonable expected costs.

(e) Notification that the parent is not restricted to choosing from sources suggested by the public agency.

(2) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. A parent is entitled to only 1 independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. The parent shall submit the parent's disagreement and request in written, signed, and dated form. However, the public agency may initiate a hearing under R 340.1724 to show that its evaluation is appropriate. The public agency shall respond, in writing, to the request within 7 calendar days of its receipt by indicating the public agency's intention to honor the request or to initiate the hearing procedure under R 340.1724. If the hearing officer determines that the evaluation is appropriate, then the parent still has the right to an independent educational evaluation, but not at public expense.

(3) The public agency shall disclose to the parent, before evaluation, whether the examiner who was contracted to provide an independent educational evaluation provides services to the public agency that are in addition to the independent educational evaluation.

(4) An independent educational evaluation shall not be conducted by an examiner or examiners who otherwise or regularly contract with the public agency to provide services, unless the examiner or examiners are agreeable to the parent.

Related IDEA Federal Regulation

§ 300.502 Independent educational evaluation.

(a) General.

(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this subpart—

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.103.

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation—

(1) (Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(e) Agency criteria.

(1) (If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

(Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A))

MARSE R 340.1724d Mediation.
Rule 24d.

(1) A parent or public agency may request a mediation process in which the relief sought consists of a mutually agreeable settlement between the parties of a dispute that might be the subject of a state special education complaint under part 8 of the rules or a due process complaint under R 340.1724 or R 340.1724(f).

(2) The state board of education shall approve procedures regarding the mediation process.

Related IDEA Federal Regulations

§ 300.506 Mediation.

(a) General. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process—

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—

(i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and

(ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3)

(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(ii) The SEA must select mediators on a random, rotational, or other impartial basis.

(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—

(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

(c) Impartiality of mediator.

(1) (1) An individual who serves as a mediator under this part—

(i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under § 300.228 solely because he or she is paid by the agency to serve as a mediator. (Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1415(e))

MARSE R 340.1724f Due process complaints; procedures.
Rule 24f.

(1) This rule applies only to due process complaints filed on or after July 1, 2006.

(2) Due process complaints under this rule shall be administered by the department of education.

(3) A parent, a public agency, or the department of education may initiate a hearing by filing a written due process complaint with the department of education, office of special education, and providing a copy of the complaint to the public agency or other party or parties that are the subject of the due process complaint. A due process complaint shall be all of the following:

(a) In writing.

(b) Signed by the complainant.

(c) Properly filed when the office of special education and the other party or parties that are the subject of the due process complaint have received a due process complaint that meets the requirements of these rules and 34 CFR §300.508(a) and (b)(1) to (4).

(d) Delivered to the office of special education in the following manner:

(a) By mail, by facsimile, or in person.

(b) With a statement describing the facts of delivery to the party or parties that are the subject of the due process complaint in the following manner:

(A) If by mail, to whom the complaint was addressed and the date it was mailed.

(B) If by facsimile, to whom the complaint was addressed, the date and time it was sent.

(C) If in person, the date and place the complaint was delivered and to whom it was given.

(4) Due process timelines begin when the office of special education and the other party that is the subject of the due process complaint have received a due process complaint that meets the requirements of these rules and 34 CFR §300.508.

(5) A hearing may be initiated on matters related to any of the following:

(a) Identification.

(b) Evaluation.

(c) Educational Placement.

(d) Provision of a free appropriate public education.

(e) Provision of appropriate services under 34 CFR part 303 to the child or the child's family.

(f) Assignment of financial obligations for services under 34 CFR part 303 to the parents.

(g) Determination that behavior was not a manifestation of the student's disability.

(h) Determination of an appropriate interim alternative educational setting by the individualized education program team.

(i) Placement in an interim alternative setting for not more than 45 school days, because maintaining the current placement is substantially likely to result in injury to the student or others.

(6) Upon receipt of a due process complaint that meets the requirements of these rules and 34 CFR §300.508(a) and (b)(1) to (4), the department of education will refer the complaint to the Michigan administrative hearing system which will appoint an administrative law judge to conduct a hearing in accordance with the individuals with disabilities education act, 20 U.S.C. §1401 et seq., 1976 PA 451, MCL 380.1701 et seq. R 340.1883 to R 340.1885 and these rules.

(7) Any party who is aggrieved by the final decision in a hearing conducted under this rule may appeal to a court of competent jurisdiction within 90 days after the mailing date of the final decision.

(8) Unless otherwise specified in the administrative law judge's decision, the decision shall be implemented by the public agency within 15 school days of the agency's receipt of the decision.

(9) When required by an administrative law judge order and decision the public agency shall submit proof of compliance to the department of education, office of special education, documenting that the public agency has implemented the provisions of the final decision.

Related IDEA Federal Regulation

§ 300.507 Filing a due process complaint.

(a) General.

(1) A parent or a public agency may file a due process complaint on any of the matters described in § 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that

forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in § 300.511(f) apply to the timeline in this section.

(b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—

(1) The parent requests the information; or

(2) The parent or the agency files a due process complaint under this section. (Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1415(b)(6))

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§ 300.508 Due process complaint.

(a) General.

(1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include—

(1) The name of the child;

(2) The address of the residence of the child;

(3) The name of the school the child is attending;

(4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;

(5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the

attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of complaint.

(1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.

(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process complaint only if—

(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to § 300.510; or

(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(4) If a party files an amended due process complaint, the timelines for the resolution meeting in § 300.510(a) and the time period to resolve in § 300.510(b) begin again with the filing of the amended due process complaint.

(e) LEA response to a due process complaint.

(1) If the LEA has not sent a prior written notice under § 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes—

(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(iv) A description of the other factors that are relevant to the agency's proposed or refused action.

(2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

(f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

(Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2))

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§ 300.509 Model forms.

(a) Each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with §§ 300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms.

(b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in § 300.508(b) for filing a due process complaint, or the requirements in § 300.153(b) for filing a State complaint.

(Authority: 20 U.S.C. 1415(b)(8))

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§ 300.510 Resolution process.

(a) Resolution meeting.

(1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under § 300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team

who have specific knowledge of the facts identified in the due process complaint that—

(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if—

(i) The parent and the LEA agree in writing to waive the meeting; or

(ii) The parent and the LEA agree to use the mediation process described in § 300.506.

(4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) Resolution period.

(1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under § 300.515 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in § 300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in § 300.515(a) starts the day after one of the following events:

(1) Both parties agree in writing to waive the resolution meeting;

(2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;

(3) If both parties agree in writing to the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is—

(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to § 300.537.

(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (d) of this section, a party may void the agreement within 3 business days of the agreement's execution.

(Authority: 20 U.S.C. 1415(f)(1)(B)) [71 FR 46753, Aug. 14, 2006, as amended at 72 FR 61307, Oct. 30, 2007]

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§ 300.511 Impartial due process hearing.

(a) General. Whenever a due process complaint is received under § 300.507 or § 300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§ 300.507, 300.508, and 300.510.

(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA

or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) Impartial hearing officer.

(1) At a minimum, a hearing officer—

(i) Must not be—

(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or

(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) (ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(d) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under § 300.508(b), unless the other party agrees otherwise.

(e) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

(f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to—

(1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

(2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent. (Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)–(D))

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§ 300.512 Hearing rights.

(a) General. Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§ 300.530 through 300.534, or an appeal conducted pursuant to § 300.514, has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) Additional disclosure of information.

(1) At least five business days prior to a hearing conducted pursuant to § 300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant

evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings. Parents involved in hearings must be given the right to—

(1) Have the child who is the subject of the hearing present;

(2) Open the hearing to the public; and

(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.

(Authority: 20 U.S.C. 1415(f)(2), 1415(h)) [71 FR 46753, Aug. 14, 2006, as amended at 73 FR 73027, Dec. 1, 2008]

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§ 300.513 Hearing decisions.

(a) Decision of hearing officer on the provision of FAPE.

(1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—

(i) Impeded the child's right to a FAPE;

(ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or

(iii) Caused a deprivation of educational benefit.

(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§ 300.500 through 300.536.

(b) Construction clause. Nothing in §§ 300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under § 300.514(b), if a State level appeal is available.

(c) Separate request for a due process hearing. Nothing in §§ 300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) Findings and decision to advisory panel and general public. The public agency, after deleting any personally identifiable information, must—

(1) Transmit the findings and decisions referred to in § 300.512(a)(5) to the State advisory panel established under § 300.167; and

(2) Make those findings and decisions available to the public.

(Authority: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o))

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§ 300.514 Finality of decision; appeal; impartial review.

(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and § 300.516.

(b) Appeal of decisions; impartial review.

(1) If the hearing required by § 300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must—

(i) Examine the entire hearing record;

(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 300.512 apply;

(iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(v) Make an independent decision on completion of the review; and

(vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must—

(1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under § 300.167; and

(2) Make those findings and decisions available to the public.

(3) (d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under § 300.516.

(Authority: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A), 1415(i)(2))

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§ 300.515 Timelines and convenience of hearings and reviews.

(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under § 300.510(b), or the adjusted time periods described in § 300.510(c)—

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The SEA must ensure that not later than 30 days after the receipt of a request for a review—

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1))

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§ 300.518 Child's status during proceedings.

(a) Except as provided in § 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under § 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under § 300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

(d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

(Authority: 20 U.S.C. 1415(j))

MARSE R 340.1724h Administrative law judge training.
Rule 24h.

The department of education, in conjunction with the state office of administrative hearings and rules, will assure that administrative law judges conducting hearings under these rules will be trained, as needed, regarding administrative law, administrative procedure, special education law, special education rules, special education policy, and special education practice.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1724i Reimbursement.
Rule 24i.

This rule applies only to due process complaints filed on or after July 1, 2006. For purposes of MCL 380.1752, this rule replaces R 340.1882(4), which was rescinded. The district of residence or public school academy shall reimburse the State 75% of the costs related to providing the due process hearing.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1725e Hearing officer or state reviewing official; duties and authority.
Rule 25e.

(1) The hearing officer or state reviewing official has the authority to do all of the following:
  (a) Administer oaths and affirmations.
  (b) Sign and issue subpoenas requiring the attendance and giving of testimony by witnesses and the production of documents.
  (c) Provide for the taking of testimony.
  (d) Require a prehearing conference, if appropriate, to consider and take action regarding any of the following:
    (i) The formulation and simplification of the issues.
    (ii) Admissions of fact and documents that will avoid unnecessary testimony.
    (iii) The need and scheduling for the filing of motions, briefs, and dates for further conferences and the hearing.
    (iv) Settlement, which may include encouraging the use of mediation or other alternative dispute resolution options.
    (v) The filing and disposition of requests or motions.
    (vi) Establishing a reasonable limit on the time allowed for presenting evidence.
    (vii) Other matters as may facilitate the disposition of the hearing.
  (e) Control the conduct of parties or participants in the hearing for the purpose of assuring an orderly procedure.

(f) Grant a specific extension of time at the request of either party for good cause.

(2) The hearing officer shall disclose to both parties any relationship of a professional or personal nature that might have a bearing on the hearing officer's ability to conduct a fair hearing or render an impartial decision and shall consider motions to disqualify himself or herself.

(3) The hearing officer may admit and consider evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial, and unduly repetitious evidence may be excluded. Effect shall be given to the rules of privilege recognized by law.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1725f Surrogate parent.
Rule 25f.

Each public agency shall appoint persons to serve as surrogate parents in accordance with 34 CFR part 300 section 300.519.

Related IDEA Federal Regulations

§ 300.519 Surrogate parents.

(a) General. Each public agency must ensure that the rights of a child are protected when—

(1) No parent (as defined in § 300.30) can be identified;

(2) The public agency, after reasonable efforts, cannot locate a parent;

(3) The child is a ward of the State under the laws of that State; or (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

(b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—

(1) For determining whether a child needs a surrogate parent; and

(2) For assigning a surrogate parent to the child.

(c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents.

(1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies must ensure that a person selected as a surrogate parent—

(i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;

(ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.

(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(f) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.

(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to—

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

(h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

(Authority: 20 U.S.C. 1415(b)(2))

Part 3: Administration of Programs and Services
MARSE Rules 340.1732 – 340.1758

MARSE R 340.1732 Designation of residency.
Rule 32.

(1) The residency of a student with a disability shall be determined in accordance with sections 380.1148 and 380.1148a of 1976 PA 451, MCL 380.1148 and MCL 380.1148a.

(2) If a disagreement occurs between 2 or more school districts as to the residency of a student with a disability, then all of the following procedures apply:

- (a) Notice shall be sent to the department by a school district involved. The notice shall include all of the following information:
  - (i) The names of all of the school districts alleged as a resident school district.
  - (ii) The name of the student involved.
  - (iii) The name and address of the parent or guardian, or address of the student if the student is over 18 years of age.
- (b) The department or its representative shall immediately notify the school districts involved and the parent, guardian, or student of the receipt of notice of disagreement.
- (c) Within 7 calendar days of receipt of notice from the department, all parties shall provide the department with a written statement of their position and supporting facts.
- (d) Within 14 calendar days of the receipt of a notice of a disagreement from a school district, the department shall investigate the matter, consider information received from the parties involved, and make a determination as to the residency of the student. A copy of the determination shall be immediately sent to each party involved.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1733 Program and service requirements.
Rule 33.

An intermediate school district, local school district, public school academy, and any other agency shall adhere to all of the following general requirements for all programs and services for students with disabilities:

(a) Special education classrooms or areas where related services are provided shall have at least the same average number of square feet per student, light, ventilation, and heat conditions as provided for general education students in the school district.

(b) Programs for students with severe cognitive impairment and severe multiple impairments which have students under 16 years of age shall not exceed a 6-year age span at any 1 time.

(c) All other special education programs which have students under 16 years of age and which are operated in separate facilities shall not exceed a 4-year age span at any 1 time.

(d) The age span for students who are assigned to special education programs, except for programs for students with severe cognitive impairment and severe multiple impairments, 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.

(e) The age span for students who are assigned to special education programs, except for programs for students with severe cognitive impairment and severe multiple impairments, operated in secondary buildings attended by students who are nondisabled, shall not exceed, at any 1 time, the age span of the students who are nondisabled in the building, except in high school buildings where students up to 26 years of age may be served. The term "nondisabled" shall not include persons participating in adult education programs.

(f) Programs for students with severe cognitive impairment, severe multiple impairments, and moderate cognitive impairment shall comply with subdivisions (b), (c), (d), and (e) of this rule unless a program is operated in accordance with an approved intermediate school district plan where, due to the low incidence of eligible students, expanded age ranges may be necessary for programmatic feasibility and meeting the needs of students.

(g) Students with disabilities qualifying for special education programs and services shall be provided with supplies and equipment at least equal to those provided to other students in general education programs, in addition to those supplies and equipment necessary to implement a student's individualized education program.

(h) Intermediate school districts, local school districts, public school academies, or a combination of such agencies in cooperation with public and private entities, shall provide or contract for the provision of transition services. Special education teachers shall be assigned to supervise such services. Professional special education personnel, a transition coordinator, or both, shall coordinate transition services.

(i) For worksite-based learning, a written agreement/plan is required and shall be signed by the student, parent, school, and worksite representative. The agreement shall set forth all of the following information:

  (i) Expectations and standards of attainment.

  (ii) Job activities.

  (iii) Time and duration of the program.

  (iv) Wages to be paid to the student, if applicable.

  (v) Related instruction, if applicable. The superintendent of the school district shall designate a staff member to visit the student's worksite at least once every 30 calendar days for the duration of the program to check attendance and student progress and assess the placement in terms of health, safety, and welfare of the student.

(j) Substitute instructional aides specified in R 340.1738, R 340.1739, and R 340.1748 shall be provided when assigned instructional aides are absent. In addition, teacher aides specified in R 340.1739 and R 340.1740 shall be provided when assigned teacher aides are absent.

Related IDEA Federal Regulation

§ 300.14 Equipment.

Equipment means—

(a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audiovisual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

(Authority: 20 U.S.C. 1401(7))

MARSE R 340.1734 Deviations from rules.
Rule 34.

(1) A deviation from these rules shall be requested, in writing, by an intermediate school district, local school district, or public school academy that operates or contracts for special education programs and services following procedures determined by the department. A copy of the request shall be filed concurrently with the intermediate school district in which affected students with disabilities reside and all local constituent school districts in which the affected students with disabilities reside. A copy of the request shall be filed concurrently with the parent advisory committee of the intermediate school district that requests the deviation and the parent advisory committee of any intermediate school district in which affected students with disabilities reside.

(2) Within 7 days of receipt of the request, the intermediate school district shall review and inquire into the request and shall file, with the department, its position regarding the appropriateness of the request and its objections to, or endorsement of, the request, together with the rationale regarding its position.

(3) The department shall initiate action within 30 calendar days of receipt of the request. The department may grant the request, in writing, for a period not to extend beyond the end of the current school year and upon such terms and conditions as it shall specify only when, in its judgment, the best interests of the students with disabilities affected by the deviation are served and good cause is shown.

(4) A deviation shall not be granted when the intent of the deviation is to exclude a student with a disability from, or deny a student with a disability participation in, a special education program or service that is required.

(5) A program deviation that is granted by the department is public information. The affected intermediate school districts, constituent local school districts, or public school academies shall inform their involved personnel of granted deviations in any manner they deem appropriate. At a minimum, the parent advisory committee shall be informed of the disposition of the request.

(6) A deviation shall not be requested for the purpose of avoiding or postponing corrections directed by the department under part 8 of these rules.

(7) If a final decision to deny a deviation request is made, then the school district that makes the request shall correct the condition that precipitated the request and shall forward to the department, office of special education, within 30 school days of the denial, its assurance that the matter is now in compliance with the respective rule.

(8) Nothing in this rule or any other provision of statute or regulation shall permit the department to waive any of the requirements of part B of the individuals with disabilities education act, as amended, 20 U.S.C. §1400 et seq.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1738 Severe cognitive impairment program. Rule 38.

A severe cognitive impairment program shall be operated as follows:

(a) There shall be 1 teacher and 2 instructional aides for a maximum of 12 students. The maximum number of students may be extended to 15 if an additional instructional aide is assigned with the placement of the thirteenth student. At least 1 full-time teacher and 1 full-time aide shall be employed in every severe cognitive impairment program.

(b) A severe cognitive impairment program shall consist of either of the following:

(i) A minimum of 200 days and 1,150 clock hours of instruction.

(ii) A minimum of 1,150 hours of instruction with no breaks greater than 10 consecutive days of pupil instruction.

(c) Any decision on whether the child shall participate in the program beyond the regular school year established by the operating district must be made on an individual basis by the individualized education program team.

(d) Teachers shall be responsible for the instructional program and shall coordinate the activities of aides and supportive professional personnel.

(e) Instructional aides shall work under the supervision of the teacher and assist in the student's daily training program.

(f) Program assistants may assist the teacher and the instructional aides in the feeding, lifting, and individualized care of students.

(g) A registered nurse shall be reasonably available.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1739 Programs for students with moderate cognitive impairment. Rule 39.

Programs for students with moderate cognitive impairment shall be operated as follows:

(a) There shall be 1 teacher and 1 teacher aide for a maximum of 15 students.

(b) There shall be 1 lead teacher and a maximum of 3 instructional aides for a maximum of 30 students, with not more than 10 students for each aide.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1740 Programs for students with mild cognitive impairment. Rule 40.

Programs for students with mild cognitive impairment shall be operated as follows:

(a) Elementary programs for students with mild cognitive impairment shall serve not more than 15 different students. When an elementary program

for students with mild cognitive impairment has 12 or more students in the room at one time, an aide shall be assigned to the program.

(b) Secondary programs for students with mild cognitive impairment shall have not more than 15 different students in the classroom at any one time and the teacher shall be responsible for the educational programming for not more than 15 different students.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1741 Programs for students with emotional impairment. Rule 41.

Programs for students with emotional impairment shall have not more than 10 students in the classroom at any one time, and the teacher shall be responsible for the educational programming for not more than 15 different students.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1742 Programs for students with hearing impairment. Rule 42.

Programs and services for students with hearing impairment shall be operated as follows:

(a) A special class with 1 teacher shall have an enrollment of not more than 7 students.

(b) Group amplification devices deemed necessary for instruction by the individualized education program team shall be provided. The public agency shall ensure that the amplification devices worn by hearing impaired children in school are functioning properly.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1743 Programs for students with visual impairment.
Rule 43.

Programs and services for students with visual impairment shall be determined by the severity and multiplicity of the impairments. A special class with 1 teacher shall have an enrollment of not more than the equivalent of 8 full-time students, and the teacher shall be responsible for the educational programming for not more than 10 different students. The public agency shall ensure that low vision aids, excluding prescription eye glasses, are available and functioning properly.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1744 Programs for students with physical impairment or other health impairment.
Rule 44.

(1) Programs for students with physical impairment or other health impairment shall have not more than 10 students in the classroom at any one time, and the teacher shall be responsible for the educational programming for not more than 15 different students.

(2) Special classroom units serving students with physical or other health impairment shall provide not less than 60 square feet of floor space per person.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1745 Services for students with speech and language impairment.
Rule 45.

All of the following provisions are specific requirements for speech and language services:

(a) The speech and language services provided by an authorized provider of speech and language services shall be based on the needs of a student

with a disability as determined by the individualized education program team after reviewing a diagnostic report provided by an authorized provider of speech and language services.

(b) The determination of caseload size for an authorized provider of speech and language services shall be made by the authorized provider of speech and language services in cooperation with the district director of special education, or his or her designee, and the building principal or principals of the school or schools in which the students are enrolled. Caseload size shall be based upon the severity and multiplicity of the disabilities and the extent of the service defined in the collective individualized education programs of the students to be served, allowing time for all of the following:

(i) Diagnostics.

(ii) Report writing.

(iii) Consulting with parents and teachers.

(iv) Individualized education program team meetings.

(v) Travel.

(c) Individual caseloads of authorized providers of speech and language services shall not exceed 60 different persons and shall be adjusted based on factors identified in subdivision (b) of this rule. Students being evaluated shall be counted as part of the caseload.

(d) An authorized provider of speech and language impaired services shall be either a teacher of students with speech and language impairment under R 340.1781, R 340.1782, and R 340.1796, or a person with a master's degree, as qualified under R 340.1792.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1746 Homebound and hospitalized services. Rule 46.

The following homebound and hospitalized services are required:

(a) Homebound services shall be initiated within 15 school days after verification, by a licensed physician, of a medical impairment which requires the eligible special education student to be confined to the home.

Such verification shall indicate the anticipated duration of the required confinement.

(b) Hospital service shall be provided for eligible special education students who cannot attend school because of hospitalization for a physical or medical impairment. These services shall be initiated when determined medically feasible.

(c) A special education teacher employed for homebound or hospital services, or for a combination of these services, shall be assigned not more than 12 students at any 1 time.

(d) Students receiving homebound or hospital services shall receive a minimum of 2 nonconsecutive hours of instruction per week. Related services personnel may supplement, but not substitute for, the teacher's instruction.

(e) The district in which the hospital is located shall make homebound and hospital services available to eligible students. If the student is hospitalized outside of the district of residence, the district of residence is responsible for delivering services or for contracting with the operating district and making payment for the services.

(f) Homebound and hospitalized services shall not be substituted for special education programs. Instead, the service provider shall endeavor, to the extent appropriate, to present curricular experiences which are being provided in the program where the student is currently enrolled.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1747 Programs for students with specific learning disabilities.
Rule 47.

Programs for students with specific learning disabilities shall have not more than 10 students in the classroom at any one time, and the teacher shall be responsible for the educational programming for not more than 15 different students.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1748 Severe multiple impairment program.
Rule 48.

(1) A severe multiple impairment program shall consist of at least 1 teacher and 2 instructional aides for a maximum of 9 students. At least 1 full-time teacher and 1 full-time aide shall be employed in every severe multiple impairments program.

(2) A severe multiple impairments program shall consist of either of the following:

(a) A minimum of 200 days and 1,150 clock hours of instruction.

(b) A minimum of 1,150 hours of instruction with no breaks greater than 10 consecutive days of pupil instruction.

(3) Any decision on whether the child shall participate in the program beyond the regular school year established by the operating district must be made on an individual basis by the individualized education program team.

(4) A registered nurse shall be reasonably available.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1748a Teacher consultant without a student caseload assignment; evaluation and consultation assignment; responsibilities.
Rule 48a.

(1) The teacher consultant for special education with an evaluation and consultation assignment shall do either or both of the following:

(a) Provide consultation to education personnel on behalf of students with disabilities.

(b) Evaluate students.

(2) The teacher consultant shall not serve in supervisory or administrative roles and perform the function of a teacher consultant simultaneously.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1749 Teacher consultant with a student caseload; responsibilities.
Rule 49.

(1) The teacher consultant for special education with a student caseload shall do 1 or more of the following:
  (a) Provide instructional services to students receiving instruction in special education programs. Instructional services are supportive of the special education teacher. A teacher consultant shall not grade, give credit for, or teach a general education or a special education subject, class, or course.
  (b) Provide instructional services to a student with a disability in a general education classroom. Instructional services are supportive of the general education teacher. The teacher consultant shall not grade, give credit for, or teach a general education subject, class, or course.
  (c) Provide consultation to education personnel on behalf of students with disabilities on the consultant's caseload.
  (d) Evaluate students suspected of being a student with a disability.

(2) The teacher consultant shall carry an active caseload of not more than 25 students with disabilities. All students served under this rule shall be counted as part of the caseload. In establishing the caseload, consideration shall be given to time for all of the following:
  (a) Instructional services.
  (b) Evaluation.
  (c) Consultation with special and general education personnel.
  (d) Report writing.
  (e) Travel.

(3) The teacher consultant shall not serve in supervisory or administrative roles and perform the function of a teacher consultant simultaneously.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1749a Elementary level resource program. Rule 49a.

(1) A district that provides a special education elementary level resource program shall be provided by a special education teacher.

(2) The elementary resource teacher shall serve not more than 10 students at any 1 time and not more than 18 different students and shall do either or both of the following:

(a) Provide direct instruction to students on the resource teacher's caseload and may assign grades or other evaluative measures for this instruction.

(b) Provide support to the general education classroom teachers to whom special education students on the resource teacher's caseload have been assigned. Time shall be allocated to the resource teacher to carry out this responsibility.

(3) The elementary resource program teacher may provide supplemental instruction to students on his or her caseload.

(4) The elementary resource teacher may evaluate general education students within the same building who are suspected of having a disability and, therefore, may serve on the initial multidisciplinary evaluation team. The resource teacher shall be responsible for the evaluation of not more than 2 students at 1 time. Time shall be allocated to the resource teacher to carry out this responsibility.

(5) If the special education teacher to whom the student is assigned does not have an endorsement in the area which matches the student's disability, the individualized educational program team shall determine if a teacher consultant with such credentials is needed to provide consultation, resources, and support services to the resource teacher.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1749b Secondary level resource program. Rule 49b.

(1) A district that provides a special education secondary level resource program shall be provided by a special education teacher.

(2) A secondary resource teacher shall serve not more than 10 students at any 1 time and have a caseload of not more than 20 different students and shall do either or both of the following:

(a) Provide direct instruction for special education courses approved for graduation by the local educational agency. The teacher may assign grades or other evaluative measures for this instruction.

(b) Provide support to the general education classroom teachers to whom special education students on the resource program teacher's caseload have been assigned. Time shall be allocated to the resource teacher to carry out this responsibility.

(3) The secondary resource teacher may provide supplemental instruction to students on his or her caseload who are enrolled in general education classes. The teacher shall not teach a class and offer tutorial assistance at the same time.

(4) If the special education teacher to whom the student is assigned does not have an endorsement in the area which matches the student's disability, the individualized educational program team shall determine if a teacher consultant with such credentials is needed to provide consultation, resources, and support services to the resource teacher.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1749c Departmentalization of special education programs. Rule 49c.

(1) A school with more than 1 special education teacher may departmentalize.

(2) Each teacher shall teach only 1 local education agency approved special education course per period.

(3) Each teacher may serve more than the students assigned to his or her caseload; however, the total number of students served cannot exceed the combined caseloads of the participating teachers.

(4) Each teacher shall serve not more than an average of 10 students per class period per instructional day.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1750 Director of special education.
Rule 50.

(1) Local school districts or public school academies may employ, or contract for the services of, a not less than half-time director of special education under the intermediate school district plan.
(2) Each intermediate school district shall employ, or contract for the services of, a full-time director of special education.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1751 Supervisor of special education.
Rule 51.

(1) A local school district, public school academy, or intermediate school district may employ a supervisor of special education instructional programs. The person shall be employed not less than half-time.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1754 Early childhood special education programs; 2 years 6 months through 5 years of age.
Rule 54.

(1) Early childhood special education programs for students with disabilities may be provided to students with disabilities who are 2 years 6 months through 5 years of age.
(2) Early childhood special education programs for students with disabilities shall do all of the following:
    (a) Be provided by an approved or endorsed early childhood special education teacher.

(b) Be based upon the student's individual needs as determined through an age appropriate developmental assessment and specified in an individualized education program.

(c) Be based on the approved state board of education early childhood standards.

(d) Have a parent participation and education component.

(e) Be available for a minimum of 360 clock hours and 144 days of instruction.

(f) Have not more than 12 students for 1 teacher and 1 aide at any one time, and the teacher shall have responsibility for the educational programming for not more than 24 different students.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1755 Early childhood special education services; 2 years 6 months through 5 years of age.
Rule 55.

(1) Early childhood special education services for students with disabilities may be provided to students with disabilities who are 2 years 6 months through 5 years of age.

(2) Early childhood special education services for students with disabilities shall do all of the following:

(a) Be provided by an approved or endorsed early childhood special education teacher or approved related service provider.

(b) Be provided by an approved related services staff working under the educational direction of an approved or endorsed early childhood special education teacher.

(c) Be provided for not less than 72 clock hours over 1 school year. Services may be provided in appropriate early childhood, school, community, or family settings.

(3) If a preschool-aged student with a disability is placed in a non-special education program, then the individualized education program team shall consider the need for consultation by an early childhood special education teacher.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1756 Programs for students with severe language impairment.
Rule 56.

(1) A public agency may establish programs for students with severe language impairment. Specific requirements for these programs are as follows:

(a) A program for students with severe language impairment conducted by a teacher of programs for students with speech and language impairment shall serve only young children with disabilities or developmental delay or elementary students with severe language impairment.

(b) The program shall have not more than 10 students or young children with speech and language impairment in the classroom at any 1 time, and the teacher shall have responsibility for the educational programming for not more than 15 different children.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1757 Students placed in juvenile detention facilities; other educational services.
Rule 57.

All of the following provisions are specific requirements for educational services conducted for students placed in juvenile detention facilities:

(a) Programs shall be initiated within 5 calendar days after admission. If a student placed in a juvenile detention facility is suspected of having a disability, then the procedure outlined in part 2 of these rules shall be immediately followed.

(b) Notification of educational placement shall be sent to the superintendent of the district of residence within 5 school days after the date of entry of a student into the educational program in a juvenile detention facility.

(c) Subject to applicable federal privacy protections, education reports for each student educated in a juvenile detention facility shall be sent by certified mail to the superintendent of the district of residence within 5 school days from the date of release from the facility.

(d) Special education reimbursed personnel may provide educational services for students who do not have disabilities and who are placed in the facility, if the programs comply with both of the following provisions:

(i) They are under the supervision of a teacher approved in the area of emotional impairment.

(ii) They have not more than 10 students in a class at any 1 time.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1758 Programs for students with autism spectrum disorder. Rule 58.

Specific requirements for programs for students with autism spectrum disorder shall be provided using either of the following alternatives:

(a) Programs that consist of 1 classroom program for students with autism spectrum disorder shall not have more than 5 students and shall be served by a teacher of students with autism spectrum disorder. However, programs that consist of more than 1 classroom may have more than 5 students in a classroom, if the average student-to-teacher-and-aide ratio does not exceed 5 students to 1 teacher and 1 aide. A classroom with 3 or more students shall have 1 aide.

(b) A special education program described in an approved intermediate school district plan under R 340.1832(d) that assures the provision of educational programming for students with autism spectrum disorder.

Related IDEA Federal Regulations

No related IDEA regulations.

Part 4: Qualifications of Directors and Supervisors
MARSE Rules 340.1771 – 340.1774

Note: There are no IDEA Federal Regulations to supplement Part 4 of the MARSE

MARSE R 340.1771 Director of special education; education and experience requirements.
Rule 71.

(1) For full approval, a director of special education shall possess all of the following minimum qualifications:
- (a) A master's degree or higher.
- (b) Full approval in at least 1 area of special education.
- (c) Three years of successful professional practice or administrative experience in special education, or a combination of practice and experience.
- (d) Thirty semester or equivalent hours of graduate credit and a successful 200-clock- hour practicum in special education administration. Graduate credit shall be earned in a college or university whose program has been approved by the state board of education and shall be distributed appropriately to assure knowledge and competency as related to special education in all of the following areas:
  - (i) Program development and evaluation.
  - (ii) Personnel staffing, supervision, and evaluation.
  - (iii) Verbal and written communication.
  - (iv) Leadership of professional development.
  - (v) Budget development and fiscal reporting.
  - (vi) Fostering parental, family, and community involvement.
  - (vii) Consultation and collaboration.
  - (viii) Dispute resolution.
  - (ix) Data-based decision-making.
  - (x) Conflict management.
  - (xi) Legal and ethical issues.
- (e) Verification from a college or university approved for the preparation of special education directors.

(2) A director of special education who has full approval status shall maintain full approval status indefinitely.

(3) For temporary approval, a director of special education shall possess all of the following minimum qualifications:

(a) A master's degree or higher.

(b) Full approval in at least 1 area of special education.

(c) Three years of successful professional practice or administrative experience in education, or a combination of practice and experience.

(d) Twelve semester or equivalent hours of graduate credit in special education administration. Graduate credit shall be earned in a college or university whose program has been approved by the state board of education.

(e) The college or university approved for the preparation of special education directors shall verify enrollment in the director of special education preparation program and completion of 12 semester or equivalent hours of graduate credit.

(4) Continuation of temporary approval is dependent upon the satisfactory completion of not less than 6 semester or equivalent hours of required credit toward full approval before the beginning of the next school year.

(5) Any person who has completed all program requirements in effect before the effective date of these rules shall be eligible for full approval as a director of special education.

MARSE R 340.1772 Supervisor of special education; education and experience requirements.
Rule 72.

(1) For full approval, a supervisor of special education shall possess all of the following minimum qualifications:

(a) A master's degree or higher.

(b) Full approval in at least 1 area of special education.

(c) Three years of successful experience in special education.

(d) Twelve semester or equivalent hours of graduate credit in a college or university whose program has been approved by the state board of education. Graduate credit shall be distributed appropriately to assure knowledge and competency as related to special education in all of the following areas:

(i) Curriculum and instruction.
(ii) Administrative procedures.
(iii) Personnel supervision and evaluation.
(iv) Communication skills.
(v) Leadership of professional development.
(vi) Facilitation of effective instruction.
(vii) Data-based program improvement.
(viii) School law and policy.
(ix) Parental and family collaboration.

(e) Verification from a college or university approved for the preparation of special education supervisors.

(2) A supervisor of special education who has full approval status shall maintain full approval status indefinitely.

(3) For temporary approval, a supervisor of special education shall possess all of the following minimum qualifications:

(a) A master's degree or higher.
(b) Full approval in at least 1 area of special education.
(c) Three years of successful experience in special education.
(d) Verification of enrollment in the supervisor of special education program from a college or university approved by the state board of education for preparation of special education supervisors.

(4) Continuation of temporary approval is dependent upon the satisfactory completion of not less than 6 semester or equivalent hours of required credit toward full approval before the beginning of the next school year.

(5) Any person who has completed all program requirements in effect before the effective date of these rules shall be eligible for full approval as a supervisor of special education.

MARSE R 340.1774 Out-of-state applicants for supervisor or director; temporary approval.
Rule 74.

An applicant for temporary approval as a supervisor or director of special education who has been educated in another state shall present evidence of fulfilling all of the requirements established for applicants who have been educated in approved Michigan colleges and universities. The department shall establish procedures for the temporary approval of out-of-state applicants as supervisors or directors of special education.

Part 5: Qualifications of Teachers and Other Personnel MARSE Rules 340.1781 – 340.1799g

Note: There are no IDEA Federal Regulations to supplement Part 5 of the MARSE

MARSE R 340.1781 Teachers of students with disabilities; endorsement requirements.
Rule 81.

(1) A teacher seeking an endorsement or full approval by the department shall meet all of the following requirements, in conjunction with those of R 340.1782, R 340.1786 to R 340.1788, R 340.1790, R 340.1795 to R 340.1797, and R 340.1799 to R 340.1799c, before being employed by an intermediate school district, local school district, public school academy, or other agency operating special education programs and services:

(a) The requisite knowledge, understanding, skills, and dispositions for effective practice related to all of the following:

(i) Utilizing research-based models, theories, and philosophies for teaching students with an array of disabilities within different placements.

(ii) Assessing students with disabilities for identification and teaching.

(iii) Implementing accommodations and modifications for classroom, district, and statewide assessments.

(iv) Using assistive technology devices to increase, maintain, or improve the capabilities of students with impairments.

(v) Communicating, consulting, and collaborating with parents/guardians, paraprofessionals, general educators, administrators, and human services personnel.

(vi) Developing, implementing, and evaluating individualized education programs.

(vii) Planning, organizing, scheduling, and conducting individualized education program team meetings, including parental and student participation.

(viii) Preparing students with disabilities for transitions consisting of preschool to elementary through post-secondary environments and employment.

(ix) Maintaining, releasing, and transferring student records according to district, state, and federal rules and policies.

(x) Articulating the historical and legal bases regarding special education, such as the concept of free appropriate public education, general least restrictive environment requirements, and family education and privacy rights.

(b) Understanding issues of race, class, culture, religion, gender, orientation, and language related to subdivision (a) of this subrule.

MARSE R 340.1782 Endorsed teachers of students with disabilities; additional requirements.
Rule 82.

An endorsed teacher of students with disabilities, in addition to meeting the specific requirements in R 340.1786 to R 340.1788, R 340.1795 to R 340.1797, and R 340.1799 to R 340.1799c, shall comply with all of the following requirements:

(a) Possess a valid Michigan teacher's certificate.

(b) Possess a baccalaureate degree with a major in a specific special education area or have earned credit in course work equivalent to that required for a major.

(c) Possess an endorsement in special education that is valid in grades kindergarten through 12. Elementary or secondary endorsements in special education, earned after September 1, 1990, shall be valid in grades kindergarten through 12.

(d) Have completed not less than 8 weeks of directed student teaching in the specific area of impairment. Not less than a 180-hour practicum in the specific area of impairment is required for each additional endorsement.

(e) Be recommended for a certificate or endorsement, or both, in a specific special education area by an institution of higher education or the department signifying verification of completion of a teacher education program for the specific special education area, as approved by the state board of education.

(f) On the effective date of these rules, persons approved as special education teachers under this rule, teacher consultants under R 340.1790, and teachers of preprimary-aged students under R 340.1795 shall maintain and continue to have their full approval status.

MARSE R 340.1783 Temporarily approved teachers of students with disabilities.
Rule 83.

Under procedures established by the department, the department may grant temporary approval as a teacher of students with disabilities to persons who hold a valid Michigan teaching certificate. The employing superintendent shall certify that the district conducted a search for fully qualified personnel and that no certified teacher who holds full approval or endorsement for the position was available at the time of the assignment. Continuation of temporary approval shall be dependent upon the satisfactory completion of not less than 6 semester or equivalent hours of required credit toward full approval between August 31 of the current school year and September 1 of the next school year that the teacher is employed. The school district is not required to conduct a search for a fully qualified teacher in successive school years if the candidate meets these requirements. The school district is not required to remove a teacher under temporary or continuing approval when a fully approved or endorsed teacher becomes available.

MARSE R 340.1783a Early childhood special education teacher; full-year permit.
Rule 83a.

(1) The department may issue a permit when a properly certificated teacher, under R 340.1795, is unavailable for a regular teaching assignment for children with disabilities or developmental delay, as defined in R 340.1711.
(2) An application for a permit shall contain evidence that the candidate has a baccalaureate degree or higher, including 15 semester or equivalent hours of appropriate professional education credit.
(3) The permit is effective through June 30 of the school year for which the permit is issued and may not be renewed for the same individual.

MARSE R 340.1786 Teachers of students with cognitive impairment; special requirements.
Rule 86.

(1) The teacher education program for teachers of students with cognitive impairment shall include a minimum of 30 semester or equivalent hours pursuant to R 340.1781, R 340.1782, and all of the following:

(a) The identification, classification, legislation and policies, historical perspectives, and levels of support for students with cognitive impairment.

(b) The nature and character of cognitive impairment and its unique impact on the following areas of human development:

(i) Social.

(ii) Emotional.

(iii) Language/communication

(iv) Physical.

(v) Motor.

(vi) Sensory.

(vii) Learning, behavior, and health related problems.

(c) The promotion of individualized participation in age appropriate environments within the school and community.

(d) Assessing, teaching, and modifying instruction and curricula for students with cognitive impairment related to all of the following:

(i) Using research-based strategies and techniques for developing language and communication abilities and skills of students with cognitive impairment to promote the development of language, reading, writing, spelling, calculating, and thinking.

(ii) Selecting, adapting, and developing specialized or general education curricula, assessments, accommodations, and instructional materials for students with cognitive impairment that is aligned with the general curriculum.

(iii) Planning and implementing instruction in settings across domains, including community, personal/social, sexuality, career/employment, and leisure/recreation.

(iv) Assessing, implementing, and supporting all levels of assistive technology for individual students.

(v) Developing and maintaining collaborative relationships and partnerships with parents/families, educators, administrators, consultants, and community service providers.

(vi) Developing individualized goals for students with cognitive impairment related to social relationships, cultural competence, self-determination, and transitions to

postsecondary training, career/employment, and community integration.

(e) Issues related to cognitive impairment theory, research, and policy, including definition and identification; legislation and regulations; pre-referral, referral and placement; instruction and assessment of educational progress for students with cognitive impairment; and, collaboration with general education teachers, families, and allied service providers.

(2) The 30 semester or equivalent hours shall be distributed to prioritize preparation, including pre-student teaching practice, in assessing, teaching, and modifying instruction for students with cognitive impairment.

MARSE R 340.1787 Teachers of students with emotional impairment; special requirements.
Rule 87.

(1) The teacher education program for teachers of students with emotional impairment shall include 30 semester or equivalent hours pursuant to R 340.1781, R 340.1782, and all of the following:

(a) The identification, etiology, diagnosis, characteristics, classifications of emotional impairment, including psychiatric terminology and research-based models.

(b) The impact of various factors upon the lives and behavior of students with emotional impairment and their families, such as the legal system, socioeconomic factors, abuse and dependency, and mental health disorders.

(c) Assessing, teaching, and modifying instruction and curricula for students with emotional impairment related to all of the following:

(i) Developing, implementing, and evaluating individualized behavior management strategies and plans.

(ii) Adapting, accommodating, and modifying the general education curricula, pedagogy, and learning environments for students with emotional impairment.

(iii) Integrating academic instruction and curriculum with affective educational strategies for students with emotional impairment.

(iv) Collaborating with parents and service providers in educational, public, and private agencies to support students with emotional impairment.

(v) Assessing students with emotional impairment related to collecting indirect and direct data on academic, social, and emotional functioning of students in order to develop reports and design, manage, and monitor interventions.

(d) Research and understand policy issues regarding emotional impairment and behavioral disorders that impact identification, service delivery, outcomes, placement, academic, affective, and behavioral interventions.

(2) The 30 semester or equivalent hours shall be distributed to prioritize preparation, including pre-student teaching field experiences in assessing, teaching, and modifying instruction related to subdivisions (a) to (d) of this subrule for students with emotional impairment.

MARSE R 340.1788 Teachers of students with learning disabilities; special requirements.
Rule 88.

(1) The teacher education program for teachers of students with learning disabilities shall include a minimum of 30 semester or equivalent hours pursuant to R 340.1781, R 340.1782, and all of the following:

(a) The identification of learning disabilities including diagnostic principles and practices; the etiology and characteristics of learning disabilities; sociocultural, linguistic, and environmental factors influencing identification; and the relationship between learning disabilities and other commonly associated conditions.

(b) The common manifestations of learning disabilities across the age span, including challenges in meeting developmental milestones in the preschool years, problems with academic performance in literacy, math, and content areas across the K-12 spectrum, issues of strategic performance and self-determination in older students, and the interplay between cognition and psychosocial functioning.

(c) Assessing, teaching, and modifying instruction and curricula for students with learning disabilities across the K-12 continuum related to all of the following:

(i) Administering and adapting formal and informal assessment methods for the purposes of instructional planning, and communicating assessment results to students, their families, and other professionals.

(ii) Developing and implementing instructional and curricular goals; monitoring and reporting the progress related to the unique needs of students with learning disabilities, including career/transition programs and access to adult role models, and use of assistive technology.

(iii) Fostering competency in the areas of reading (word recognition and comprehension), writing (text composition and revision, grammar, spelling, and legibility), mathematical reasoning and calculation, listening, and speaking.

(iv) Fostering study skills and test-taking skills, self-management, problem solving, reasoning, coping skills, and self-determination.

(v) Adapting and modifying general education curricula, pedagogical approaches, and learning environments for students with learning disabilities.

(vi) Managing and monitoring the social, emotional, and behavioral needs of students with learning disabilities in a variety of group settings.

(d) Issues related to learning disabilities theory, research, and policy, including definition and identification; legislation and regulations; pre-referral, referral and placement; instruction and assessment of educational progress for students with learning disabilities; and, collaboration with general education teachers, families, and allied service providers.

(2) The 30 semester or equivalent hours shall be distributed to prioritize preparation, including pre-student teaching field experiences in assessing, teaching, and modifying instruction related to subdivisions (a) to (d) of this subrule for students with learning disabilities.

MARSE R 340.1790 Teachers consultants for students with disabilities. Rule 90.

In addition to meeting all of the requirements of R 340.1782, a teacher consultant shall meet both of the following requirements for full approval by the department:

(a) Possess a master's degree in education or a field of study related to special education.

(b) Show evidence of a minimum of 3 years of satisfactory teaching experience, not less than 2 years of which shall be teaching in a special education program.

MARSE R 340.1792 Licensure, certification, or approval of professional personnel.
Rule 92.

Professional personnel employed or contracted with to provide related services to students with disabilities shall be licensed, certificated, or registered by a governmental agency or a legally recognized professional board or association as an indication of adequate preparation and training, or be recommended by a college or university offering an appropriate training program as approved by the state board of education.

MARSE R 340.1793 Paraprofessional personnel; qualifications.
Rule 93.

Paraprofessional personnel employed in special education programs shall be qualified under requirements established by their respective intermediate school district plan. Paraprofessional personnel include, but are not limited to, teacher aides, health care aides, bilingual aides, instructional aides, and program assistants in programs for students with cognitive impairment or severe multiple impairments.

MARSE R 340.1793a Interpreters for the deaf.
Rule 93a.

An interpreter for the deaf who provides services for students with disabilities in a local school district, an intermediate school district, the Michigan school for the deaf, or a public school academy as an employee or contractor shall satisfy the applicable credential requirements set forth in rules promulgated under the deaf persons' interpreters act, 1982 PA 204, MCL 393.501 to 393.509.

MARSE R 340.1795 Early childhood special education teachers; special requirements.
Rule 95.

(1) An early childhood special education teacher for young children with disabilities or developmental delay shall possess any of the following:
  (a) An endorsement in both early childhood and special education.
  (b) A major or minor in early childhood growth education or child growth and development and a special education endorsement with a full approval from the department of education.
  (c) An endorsement with a designation of ZS (early childhood general and special education).

(2) A teacher who has received full approval as a teacher of preprimary age impaired students shall be deemed to have full approval as an early childhood special education teacher, if the teacher possesses a valid Michigan teaching certificate.

MARSE R 340.1796 Teachers of students with speech and language impairment; special requirements.
Rule 96.

(1) A teacher of students with speech and language impairment shall meet all of the following requirements:
  (a) An earned master's degree in speech and language pathology.
  (b) A minimum of 60 semester or equivalent hours of academic credit in normal aspects of human communication, development thereof, and clinical techniques for evaluation and management of speech and language disorders distributed as follows:
    (i) A minimum of 12 semester or equivalent hours in courses pertaining to normal development of speech, language, and hearing.
    (ii) A minimum of 30 semester or equivalent hours in courses on communication disorders and evaluation and management of speech, language, and hearing disorders. Of these 30 semester or equivalent hours, 24 hours shall be in speech and language pathology and 6 shall be in audiology. Not more than 6 of the 30 semester or equivalent hours may be earned for clinical practicum.

(iii) A minimum of 30 semester or equivalent hours that are acceptable on a graduate level, of which 21 hours shall be within the group specified under paragraph (ii) of this subdivision.

(c) A minimum of 300 clock hours of supervised practicum experience with persons who present a variety of communication disorders, to be acquired in conjunction with academic training, 150 hours of which shall be obtained at the graduate level.

(2) The department shall approve as a teacher of students with speech and language impairment a person who is employed or approved as a teacher of students with speech and language impairment before the effective date of these rules.

(3) A teacher of students with speech and language impairment assigned to programs for students with severe language impairment, as defined in R 340.1756, shall be certified at the elementary level.

MARSE R 340.1797 Teachers of students requiring adapted physical education; special requirements.
Rule 97.

A teacher of students requiring adapted physical education shall possess a valid Michigan teaching certificate with an endorsement in physical education, special education, or both, and shall complete all of the following:

(a) A minimum of 20 semester hours or equivalent hours in courses leading to the acquisition of all of the following competencies:

(i) Knowledge of the causes of various disabilities and the effects of those conditions on learning.

(ii) Ability to assess physical education skills of individuals exhibiting various disabilities.

(iii) Ability to use community and staff resources and collaborate with personnel within the education environment.

(iv) Knowledge of measurement and evaluation, including standardized and nonstandardized assessments and functional behavior analysis.

(v) Understand major components of federal and state legislation relating to physical education.

(vi) Knowledge of the unique characteristics and implications of psychomotor, cognitive, and affective attributes of all learners.

(vii) Ability to write in behavioral terms and assess cognitive, affective, and psychomotor instructional objectives for physical education for students requiring adapted physical education.

(viii) Knowledge of motor characteristics, motor behaviors, motor control, and motor development sequences associated with various disabilities in relationship to typical motor development.

(ix) Knowledge of anatomy, kinesiology, exercise science, biomechanics, and neurology that pertains to normal and abnormal motor control and sensory motor integration for teaching physical education to students with disabilities.

(x) Ability to adapt teaching methods, materials, and techniques to meet the needs of students with disabilities specific to health-related fitness, gymnasium and field use, fundamental motor skills and patterns, aquatic skills, dance, individual and group games, and lifetime sports skills for the needs of students with disabilities so that the individual can ultimately participate in community-based leisure, recreation, and sport activities.

(xi) Ability to analyze, adapt, and implement physical education curriculum in providing appropriate programs for a variety of disabilities.

(xii) Understand history and philosophy of physical education, recreation, and sports in terms of trends in education of individuals with disabilities.

(xiii) Understand curriculum theory, curriculum development, movement education, fitness, developmental activity-based curriculum, human, and social development.

(xiv) Utilize instructional design and planning focusing on systematic curriculum development and the spectrum of teaching styles for the purpose of promoting learning.

(xv) Create and implement physical activity lessons with special emphasis on personal adjustment in respect to assistive devices and mobility devices for the purpose of creating successful learning opportunities.

(xvi) Utilize technology applications in the preparation of lessons and within lessons, as well as using technology as professional development.

(xvii) Understand the value of program evaluation measuring student performance and the importance of monitoring the quality of program operations.

(xviii) Understand professional standards such as ethics, value appropriate professional conduct, and the need to advance the knowledge base and the profession.

(b) A directed field experience of not less than 60 clock hours teaching adapted physical education in a school setting to students with disabilities.

(c) As of the effective date of these rules, a teacher who has previously received full approval as a teacher of physical education for individuals with disabilities, or teaching of physical education for students with disabilities, shall be deemed to have full approval as a teacher of physical education for students requiring adapted physical education, if the teacher possesses a valid Michigan teaching certificate.

(d) As of the effective date of these rules, a teacher who is a certified adapted physical educator accredited through the adapted physical education national standards process, shall be deemed to be qualified as a teacher of physical education for students requiring adapted physical education, if the teacher possesses a valid Michigan teaching certificate.

MARSE R 340.1798 Teachers of students requiring adapted physical education; role.
Rule 98.

Teachers of students requiring adapted physical education may do any of the following:

(a) Provide adapted physical education instruction to students with disabilities whose disabilities preclude integration into general physical education classes without supports or modifications.

(b) Assess students for the purpose of providing adapted physical education.

(c) Provide supportive services in general physical education and consultative services to general physical education teachers or special education teachers.

MARSE R 340.1799 Teachers of students with autism spectrum disorder; special requirements.
Rule 99.

(1) The teacher education program for teachers of students with autism spectrum disorder shall include a minimum of 30 semester or equivalent hours pursuant to R 340.1781, R 340.1782, and all of the following:

(a) The identification, diagnosis criteria and classification, etiology, diagnosis, range, and characteristics of autism spectrum disorder, for example, learning characteristics, sensory integration patterns, and medications commonly used with autism spectrum disorders including effects.

(b) The role of language and communication including traits, characteristics, and interventions related to autism spectrum disorder, for example, pragmatic functions of communications and language such as the relationships of communication, language, behavior, and social skills; expressive and receptive language development and patterns; effects of medication on language; developing communication systems such as alternative and augmentative communication systems and assistive technology across environments.

(c) Using behavioral supports and intervention: behavior as communication; sensory needs and impact on behavior: team-based behavior assessments, intervention, and evaluation; designing environments for preventing sensory overload; and, developmentally appropriate behavior such as coping and self-regulating behavior.

(d) Assessing, teaching, and modifying instruction and curricula for students with autism spectrum disorder related to all of the following:

(i) Aligning and adapting the student's program with the general education curriculum.

(ii) Using a range of curriculum guides to assist with identifying functional goals.

(iii) Employing current assessment instruments and approaches, intervention methodologies, strategies, and techniques that are appropriate for students with autism spectrum disorder,

and consistently linking assessment outcomes to curriculum planning.

(iv) Understanding and using various data keeping systems to record progress and evaluate intervention.

(e) Collaborating with parents and service providers, including paraprofessionals, in educational, public, and private agencies to support students with autism spectrum disorder; and, the impact of the legal system, socioeconomic factors, mental health disorders, resources for independent living, recreation, and vocational education on the lives and behavior of students with autism spectrum disorder and their families.

(f) Issues related to autism spectrum disorder theory, research, and policy, including definition and identification; legislation and regulations; prereferral, referral and placement; instruction and assessment of educational progress for students with autism spectrum disorder, and collaboration with general education teachers, families, and allied service providers.

(2) The 30 semester or equivalent hours shall be distributed to prioritize preparation, including pre-student teaching practice, in assessing, teaching, and modifying instruction for students with autism spectrum disorder.

MARSE R 340.1799a Teachers of students with physical impairment and students with other health impairment; special requirements.
Rule 99a.

(1) The teacher education program for teachers of students with physical impairment and students with other health impairment shall include a minimum of 30 semester or equivalent hours pursuant to R 340.1781, R 340.1782 and all of the following:

(a) The identification, etiology, diagnosis, and classification of physical, neurological, and other health impairment.

(b) Understanding of human anatomy and physiology; medical terminologies; the types and transmission of infectious and communicable diseases; physical effects of medications; the nature of medical interventions and treatment of physical and other health impairment.

(c) The impact upon student learning and development (behavioral, cognitive, social, and emotional development) of physical, neurological, and other health impairment, including the impact of chronic and terminal illness and emergency/life threatening situations.

(d) Assessing, teaching and modifying instruction and curricula for students with physical, neurological, and other health impairment related to all of the following:

(i) Administering, adapting, and modifying formal and informal assessments of learning for students with physical, neurological, and other health impairments.

(ii) Adapting and modifying the teaching and learning environment to accommodate the diverse needs of students with physical, neurological, and other health impairment.

(iii) Developing learning and instructional plans, designing learning sequences and opportunities in differing educational settings and placements.

(iv) Monitoring student progress and making appropriate modifications to instructional and educational methods as needed by students with physical, neurological, and other health impairment, including selecting, adapting, and using specialized materials and instructional strategies to maximize learning.

(v) Selecting, adapting, implementing and designing classroom settings and physical arrangements to facilitate and enhance opportunities for students to participate, interact, and learn with all students and adults in both special and general educational settings including individual, group, and shared projects, in and after school such as recreational activities; organizing and managing different needs and support services for individual and groups of students with different physical; neurological and other health impairment in all educational settings considering safety, as well as maximizing and fostering interactive inclusive opportunities for students.

(vi) Developing curricular and instructional plans and activities related to all of the following:

(A) Daily living, self management of personal and health care needs, sexuality, independent living, vocational/career transition, recreation/leisure, and mobility/transportation.

(B) Advocacy/legal issues.

(vii) Communicating student progress, performance, health issues and other school-related information to students, families, and other educational and medical professionals.

(e) Managing, monitoring, and assisting consistent with school policy and law in health care procedures; the use of orthotic, augmentative, and other supportive equipment; specialized technology and software; adapted switches/other access devices and environmental controls; and, student and teacher safety in transferring, lifting, and seating which enhances the student's and teacher's safety, comfort, and function.

(f) Issues related to physical, neurological, and other health impairments in research; their impact on learning and development; characteristics, definitions, determination, and identification; pre-referral, referral, and placement; laws and policies related to specialized health care in educational settings; teaching and assessing the educational progress of students who have physical, neurological, and other health impairment.

(2) The 30 semester or equivalent hours shall be distributed to prioritize preparation and including pre-student teaching field experiences in assessing, teaching and modifying instruction related to students with physical, neurological, and other health impairment.

MARSE R 340.1799b Teachers of students with visual impairment; special requirements.
Rule 99b.

The teacher education program for teachers of students with visual impairment shall include a minimum of 30 semester or equivalent hours pursuant to R 340.1781, R 340.1782, and all of the following:

(a) Understand and apply knowledge of the foundations for the education of students with visual impairments, including unique characteristics and needs, as well as ethical considerations relating to students' education.

(b) Research and understand legislation and policies which impact identification, educational continuum, placement, service delivery, and outcomes.

(c) Knowledge of normal development of the visual system, structure and function of the eye, diseases and disorders of the eye, and their educational implications.

(d) Understand the effects of a visual impairment on early development in the following areas:

(i) Cognition.

(ii) Self-help.

(iii) Language.

(iv) Motor skills.

(v) Social emotional interactions.

(e) Interpret eye reports and other vision-related diagnostic information.

(f) Proficiency in the use and transcription of the literary braille and nemeth code using a braillewriter and slate and stylus.

(g) Instructional strategies for teaching braille and early literacy skills.

(h) Techniques for production of tactile graphics and instruction of tactile perceptual skills.

(i) Instructional strategies for teaching communication skills, including adapting materials for students with visual and unique educational needs.

(j) Understand and apply knowledge of formal and informal assessments and evaluations; use resulting data and other information to make service and programming recommendations; participate in the development of students' individualized education programs and individualized family service plans.

(k) Use data to identify individualized instructional strategies that enhance learning for students with visual impairments through modification of the environment, adaptation of materials, and the use of disability-specific methodologies and technologies.

(l) Systematic instruction in sensory perceptual skills including, but not limited to, visual, tactile, and auditory skills.

(m) Utilize and integrate appropriate technologies to access the general education curriculum content.

(n) Teach students to use a variety of adaptive, augmentative, and assistive technologies to facilitate their own learning in the content areas.

(o) Promote students' development and concepts of social and independent living skills.

(p) Knowledge of the role and function of a certified orientation and mobility specialist.

(q) Prepare students to respond to societal attitudes and actions with positive behavior and self-determination leading to self-advocacy.

(r) Collaborate with parents and service providers in educational, public, and private agencies to support students with visual impairments. Facilitate transitions across all environments.

(s) The 30 semester or equivalent hours shall be distributed to prioritize preparation, including pre-student teaching field experiences in assessing, teaching, and modifying instruction related to subdivisions (a) to (r) of this subrule for students with a visual impairment.

MARSE R 340.1799c Teachers of students with hearing impairment; special requirements.
Rule 99c.

(1) The teacher education program for teachers of students with hearing impairment shall include a minimum of 30 semester or equivalent hours. The teacher education program for teachers of students with hearing impairment shall meet the council on education of the deaf standards or shall, at a minimum, include 30 semester or equivalent hours relating to all of the following areas:

(a) Language and linguistics.

(b) Audiology and speech science.

(c) Psychology.

(d) Education.

(2) Students shall complete a program that is designed to develop all of the following competencies:

(a) Knowledge of linguistics, theories of language development, and the various special methods used to assess and develop language competence.

(b) Ability to utilize an individual diagnostic profile of the student's expressive and receptive language skills.

(c) Ability to integrate language development with the teaching of English, mathematics, social studies, science, and other academics.

(d) Ability to use various and combined modes, manual and oral, in both expressive and receptive communication with students with hearing impairment.

(e) Knowledge of the anatomy, physiology, and pathology of the organs of speech and hearing.

(f) Knowledge of audiological assessment information and its application to the individualized education program of a student with hearing impairment.

(g) Knowledge of personal and group amplification systems, including their basic maintenance.

(h) Ability to incorporate and teach appropriate procedure to maximize the use of speech, speech reading, and auditory skills.

(i) Ability to use systematic observational techniques for establishing baseline data, evaluating problem areas, and for documenting and assessing progress.

(j) Knowledge of the psychological and sociological impact of severe/profound hearing impairment, including information about the community/culture of adult persons who are deaf.

(k) Ability to identify and use local, state, and national resources in support of students with hearing impairment, their parents, and their educational program.

(l) Ability to orient parents, general education school staff, and administrators to the unique needs and learning styles of students with hearing impairment.

(m) Ability to assess communication, academic, and social/emotional development of students with hearing impairment.

(n) Ability to relate diagnostic information in functional terms to parents and support service specialists.

(o) Ability to design and implement an educational program appropriate to the individual student's communication, academic, prevocational, and social needs.

(p) Ability to modify and adapt procedures for teaching reading, math, and other academic subjects to students with hearing impairment.

(3) Before assignment to directed student teaching, each student shall spend a minimum of 60 clock hours in programs utilizing various communication modes, both manual and oral.

(4) The council on the education of the deaf standards, as cited in subrule (1) of this rule, are adopted by reference in these rules and are available

from the Council on Education of the Deaf, Gallaudet University, 800 Florida Avenue, N.E., Washington, D.C. 20002-3695, and also from the Michigan Department of Education, Office of Special Education, P.O. Box 30008, Lansing, MI, 48909, at no cost for reproduction.

MARSE R 340.1799e "Psychologist" defined.
Rule 99e.

"Psychologist" means an approved Michigan school psychologist who is certified by the department or who is a fully licensed psychologist.

MARSE R 340.1799f "School social worker" defined.
Rule 99f.

"School social worker" means a school social worker who is approved by the department.

MARSE R 340.1799g Transition coordinator; requirements.
Rule 99g.

(1) Full approval as a transition coordinator shall be granted by the department to a person who meets all of the following requirements:
   (a) A bachelor's or graduate degree in special education or a field related to transition of youth with disabilities into adult life roles. Related fields include, but are not limited to, general and vocational education, vocational rehabilitation, and counseling.
   (b) A minimum of 3 years of satisfactory teaching experience in special or vocational education at the secondary level; or a minimum of 3 years of satisfactory employment providing transition-related service to individuals with disabilities between the ages of 13 to 26 years. Transition-related services include, but are not limited to, vocational rehabilitation, employment, counseling, independent living, and mental health. A person with a master's degree in special education or field related to transition of youth with disabilities into adult life roles shall be credited with 1 year of employment.
   (c) Approval under competencies and procedures established by the department.

Part 6: Financing
MARSE Rules 340.1801 – 340.1812

Note: There are no IDEA Federal Regulations to supplement Part 6 of the MARSE

MARSE R 340.1801 Source of funds.
Rule 101.

Funds for operating and housing special education programs and services operated by intermediate school districts, constituent local school districts, and public school academies shall be derived from federal appropriations; general and categorical appropriations in 1979 PA 94, MCL 388.1601 et seq., and known as the state school aid act of 1979; local general and specific property taxes, gifts, grants, and bequests; or payments from a school district sending students with disabilities to another school district.

MARSE R 340.1802 Use of funds.
Rule 102.

Funds available to intermediate school districts, constituent local school districts, and public school academies as provided in R 340.1801 may be used for any of the following:

(a) The employment of teachers and other personnel.
(b) Transportation of students with disabilities.
(c) The purchase and maintenance of equipment and supplies.
(d) The lease, purchase, construction, renovation, or acquisition of vehicles, sites, buildings or portions thereof, and equipment as deemed necessary for staff, programs, and services operated under the intermediate school district plans as approved by the department and other provisions of law.

MARSE R 340.1803 Building or purchasing facilities.
Rule 103.

When facilities are purchased, constructed, or renovated with funds acquired through 1976 PA 451, MCL 380.1722 to 380.1729 for constituent local school districts, funds shall be used for contractual purposes which provide that the

constituent local school district or public school academy shall make that facility available for special education programs and services for a period of 25 years. Disbursement of the funds shall be made by the intermediate school district board of education under the intermediate school district plan.

MARSE R 340.1808 Reporting costs.
Rule 108.

An intermediate school district, a local school district, or a public school academy operating a program under these rules shall submit to the superintendent of public instruction, at the close of the fiscal year, an itemized report of the actual cost of operating the program, including the cost of transportation, on forms provided for that purpose. Reported actual costs for purposes of reimbursement shall include only those that are reasonable and appropriate as determined by the superintendent of public instruction.

MARSE R 340.1809 State aid to operating school districts.
Rule 109.

The intermediate school district and its constituent local school districts and public school academies shall be entitled to receive reimbursement for special education programs and services that are in compliance with these rules and in accordance with the intermediate school district plan as approved by the department and as prescribed in 1979 PA 94, MCL 388.1601 et seq. and known as the state school aid act of 1979.

MARSE R 340.1810 Reimbursement of special education transportation.
Rule 110.

Specialized transportation or additional transportation, or both, as required in the individualized education program for a person with a disability to receive a free appropriate public education in the least restrictive educational environment, shall be reimbursable as authorized by 1979 PA 94, MCL 388.1601 et seq., and known as the state school aid act of 1979.

MARSE R 340.1811 Distribution of intermediate millage to intermediate school district, its constituent local districts, and public school academies. Rule 111.

(1) Only those programs and related services provided under a department-approved intermediate school district plan and approved for reimbursement by the department shall be eligible for reimbursement from funds generated by adoption of millage under sections 1723 and 1724 of 1976 PA 451, MCL 380.1723 and 380.1724.

(2) If intermediate school district special education tax funds are insufficient to reimburse constituent claims in full, then a like percentage of the claim shall be paid for support of each program and service to each constituent district. Claims for operation of special education programs and services available to all constituent local school districts or public school academies may be reimbursed in full before any prorated payment which may become necessary for other programs and services.

(3) Current intermediate school district special education tax funds need not be used to offset operational claim deficits from prior years.

(4) Amounts may be retained by the intermediate school district for required cash flow purposes not to exceed 1 year's operational expenses for the purpose of maintaining special education programs and services operated by the intermediate school district.

(5) Intermediate school districts shall submit the desired method for the distribution of funds to the intermediate school district, its constituent local school districts, and public school academies and the reasons therefor for approval as part of the intermediate school district plan required under section 1711 of 1976 PA 451, MCL 380.1711.

MARSE R 340.1812 Intermediate school districts' use of special education millage.
Rule 112.

(1) Costs for the operation of special education programs and services by the intermediate school district, available to all constituent local school districts and public school academies, may be reimbursed in full before the reimbursement of local districts from funds generated by adoption of millage under sections 1723 and 1724 of 1976 PA 451, MCL 380.1723 and 380.1724.

(2) If intermediate school district special education personnel offer direct services to students with disabilities in some but not all constituent local school districts or public school academies, and if prorated payment of constituent local school district or public school academy operational claims is necessary, then the per capita deficit for each student served shall be paid by the school district of residence or a direct charge shall be made to the constituent local school district based on the amount of deficit and the proportion of time the constituent local school district or public school academy received the service from the intermediate school district.

Part 7: Development and Submission of Intermediate School Districts' Plans and Monitoring MARSE Rules 340.1831 – 340.1839

MARSE R 340.1831 Intermediate school districts' use of special education millage.
Rule 131.

(1) Each intermediate school district board shall submit an intermediate school district plan for special education to the superintendent of public instruction to become effective when approved by the superintendent of public instruction.

(2) Any intermediate school district plan or subsequent modification approved by the superintendent of public instruction shall be distributed by the intermediate school district to each constituent local school district superintendent, each chief executive officer of a public school academy, and the chairperson of the parent advisory committee within 7 calendar days of the intermediate school district's receipt of approval by the superintendent of public instruction.

(3) Except as provided in subrule (4) of this rule, a plan submitted by an intermediate school district and approved by the superintendent of public instruction shall remain in effect until the intermediate school district submits modifications that the intermediate school district deems necessary to the department and the modifications are approved by the superintendent of public instruction.

(4) The department may require an intermediate school district to modify its plan if, after the effective date of the individuals with disabilities education act, 20 U.S.C. §1400 et seq., the provisions of that act, its regulations, 34 C.F.R. 300.1, et seq., 1976 PA 451, MCL 380.1 et seq. or these rules are amended, there is a new interpretation of any of these laws or regulations by the United States Department of Education, the department, or court, or the department finds noncompliance.

(5) If the department requires a modification to the intermediate school district plan under subrule (4) of this rule and an intermediate school district's process as set forth in this part does not result in agreement among the intermediate school district, its constituent local school districts, public school academies, and the parent advisory committee

regarding the required modification, then the intermediate school district shall submit the required modification. A constituent local school district, public school academy, or the parent advisory committee may file an objection under R 340.1836.

Related IDEA Federal Regulation

§ 300.200 Condition of assistance.

An LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in §§ 300.201 through 300.213.

(Authority: 20 U.S.C. 1413(a))

MARSE R 340.1832 Intermediate school districts' use of special education millage.
Rule 132.

An intermediate school district plan for special education, or any modification thereof, shall be an operational plan that sets forth the special education programs and related services to be delivered. The plan shall comply with 1976 PA 451, MCL 380.1 et seq. and these rules. The plan shall also comply with the following format and include, at a minimum, all of the following:

(a) A description of the procedures used by the intermediate school district to advise and inform students with disabilities, their parents, and other members of the community of the special education opportunities required under the law; the obligations of the local school districts, public school academies, and intermediate school district; and the title, address, and telephone number of representatives of those agencies who can provide information about the special education opportunities.

(b) A description of activities and outreach methods which are used to ensure that all citizens are aware of the availability of special education programs and services.

(c) A description of the type of diagnostic and related services that are available, either directly or as a purchased service, within the intermediate school district or its constituent local school districts or public school academies.

(d) A description of the special education programs designed to meet the educational needs of students with disabilities.

(e) The intermediate school district plan shall either describe special education programs and services under part 3 of these rules or shall propose alternative special education programs and services.

(f) Provide an assurance statement that any personally identifiable data, information, and records of students with disabilities are collected, used, or maintained in compliance with 34 C.F.R. §§300.610 through 300.626.

(g) The identity of the full- or part-time constituent local school district or public school academy administrator who, by position, is responsible for the implementation of special education programs and services.

(h) A description of the qualifications of paraprofessional personnel.

(i) A description of the transportation necessary to provide the special education programs and services described in subdivisions (c), (d), and of this subrule.

(j) A description of the method of distribution of funds under R 340.1811(5).

(k) A description of how the intermediate school district will appoint the parent advisory committee members under R 340.1838(1) and (2).

(l) A description of the role and responsibilities of the parent advisory committee, including how it shall participate in the cooperative development of the intermediate school district plan, formulate objections thereto, if any, and other related matters.

(m) A description of the role and relationship of administrative and other school personnel, as well as representatives of other agencies, in assisting the parent advisory committee in its responsibilities.

(n) A description of the fiscal and staff resources that shall be secured or allocated to the parent advisory committee by the intermediate school district to make it efficient and effective in operation.

(o) The plan shall be approved by the superintendent of public instruction before implementation under R 340.1831(1). The plan is developed and approved under R 340.1833 and R 340.1835 to R 340.1837.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1833 Cooperative development and review.
Rule 133.

(1) Intermediate school district plans, or any modification thereof, shall be developed in cooperation with constituent local school districts, public school academies, and the parent advisory committee.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1835 Plan signatures.
Rule 135.

Each intermediate school district plan, or modification thereof, shall be signed by all of the following:

(a) The intermediate school district superintendent, signifying approval by the intermediate school district board.
(b) The superintendent of each constituent local school district, the chief executive officer of each public school academy, and the chairperson of the parent advisory committee, signifying their involvement in the development of the intermediate school district plan.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1836 Objections to plan; procedures.
Rule 136.

(1) Any constituent local school district, public school academy, or the parent advisory committee may file objections with the intermediate school district, in whole or in part, to an approved intermediate school district plan or a plan modification that has been submitted to the superintendent of public instruction for approval. Copies of an objection to the plan shall, within 7 calendar days, be directed to the department by the intermediate school district board of education and to all constituent local school districts, public school academies, and the parent advisory committee by

certified mail, return receipt requested. Objections filed shall specify the portions of the intermediate school district plan objected to, contain a specific statement of the reasons for objection, and shall propose alternative provisions.

(2) A hearing officer shall be designated by the department and shall promptly give reasonable notice of the hearing. The hearing shall begin not later than 30 calendar days from the date the request was filed with the department. The hearing shall be conducted according to procedures established by the department. After the appointment of the hearing officer, the objection may be withdrawn upon written stipulation of the intermediate school district and the objecting party.

(3) The intermediate school district, a constituent local school district, a public school academy, or the parent advisory committee may file, with the department, a response to the objection before the hearing.

(4) Within 30 calendar days after the closing of the hearing, the hearing officer shall report findings of fact and conclusions of law and shall recommend to the superintendent of public instruction whether the intermediate school district plan or modification to the plan should be approved as submitted, approved with such other modifications as deemed appropriate by the hearing officer, or the objections granted as submitted. The findings and recommendations shall be immediately mailed by the department to all parties to the intermediate school district plan. Any party may file written exceptions to the findings and recommendations with the superintendent of public instruction within 20 calendar days of receipt of the findings and recommendations and direct copies of the exceptions to all other parties and the department. The findings and recommendations of the hearing officer, including any exceptions, shall be submitted to the superintendent of public instruction with the intermediate school district plan. The superintendent of public instruction shall render a final decision within 30 calendar days from the date the exceptions were to be filed.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1837 Approval of intermediate school district plans. Rule 137.

(1) Intermediate school district plans, or modification thereof, or any changes to the intermediate school district plan based on an objection to the plan, shall be approved by the superintendent of public instruction under R 340.1836. The intermediate school district plans or modifications shall be in compliance with all of the following:

(a) The provisions of sections 1701 to 1766 of 1976 PA 451, MCL 380.1701 to 380.1766.

(b) Michigan rules promulgated to implement statutory provisions for special education programs and services.

(c) The individuals with disabilities education act, 20 U.S.C. §1400 et seq., and its implementing regulations, 34 C.F.R. §300.1 et seq., adopted by reference in R 340.1701.

(2) The intermediate school district superintendent, or superintendent's designee, shall advise each constituent local school district superintendent, each chief executive officer of a public school academy, and the chairperson of the parent advisory committee as to whether the intermediate school district plan was approved by the superintendent of public instruction.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1838 Parent advisory committee. Rule 138.

(1) A parent advisory committee shall be appointed by each intermediate school district board.

(a) The parent advisory committee and its officers shall consist only of parents of students with disabilities with at least 1 parent from each constituent local school district and public school academy unless no parent agrees to serve on the parent advisory committee to represent the constituent local school district or public school academy.

(b) Each constituent local school district board of education and each public school academy board of directors shall nominate at least 1 parent.

(c) The intermediate school district board of education may nominate additional members not to exceed 33 1/3% of the total parent advisory committee membership.

(2) The intermediate school district board of education shall make every attempt to assure that all types of impairments and all identifiable organizations of parents of students with disabilities within the intermediate school district are represented on the parent advisory committee.

(3) The intermediate school district board of education may recommend operational procedures for parent advisory committee review and adoption.

(4) The intermediate school district shall secure or allocate fiscal and staff resources to the parent advisory committee to make it efficient and effective in operation.

(5) The parent advisory committee is responsible for determining and documenting, in writing, the organizational structure of the committee, including all of the following:

(a) Officers and their responsibilities.

(b) Meeting times.

(c) Notice of meeting times.

(d) Voting procedures.

(e) Terms of office.

(f) Related matters.

(6) The parent advisory committee shall participate in the development of the intermediate school district's plan or any modification of the plan for the delivery of special education programs and services as required by R 340.1833.

(7) The parent advisory committee may provide advisory input on any matters that the committee deems appropriate to the improvement of special education services within the intermediate school district.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1839 Parent advisory committee.
Rule 139.

(1) The department shall establish monitoring procedures, criteria, and evaluation activities to ensure that minimum standards are being achieved by all public agencies.

(2) Each intermediate school district shall implement monitoring procedures and evaluation methods developed by the department to ensure that the standards and criteria established are being achieved by the intermediate school district, their constituent local school districts, and their public school academies.

Related IDEA Federal Regulations

No related IDEA regulations.

Part 8: State Complaints
MARSE Rules 340.1851 – 340.1855

MARSE R 340.1851 Filing a state complaint.
Rule 151.

(1) A state complaint filed with the department, office of special education, shall meet the requirements of 34 CFR § 300.153.

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

(3) A state complaint shall be delivered to the department, office of special education, 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.

Related IDEA Federal Regulations

§ 300.151 Adoption of State complaint procedures.

(a) General. Each SEA must adopt written procedures for—

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of § 300.153 by—

(i) Providing for the filing of a complaint with the SEA; and

(ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§ 300.151 through 300.153.

(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address—

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all children with disabilities. (Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0600)

(Authority: 20 U.S.C. 1221e–3)

§ 300.153 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§ 300.151 through 300.152.

(b) The complaint must include—

(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant; and

(4) If alleging violations with respect to a specific child—

(i) The name and address of the residence of the child;

(ii) The name of the school the child is attending;

(iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;

(iv) A description of the nature of the problem of the child, including facts relating to the problem; and

(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with § 300.151.

(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA. (Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0600)

(Authority: 20 U.S.C. 1221e–3)

MARSE 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.

Related IDEA Federal Regulations

§ 300.152 Minimum State complaint procedures.

(a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 300.153 to—

(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—

(i) At the discretion of the public agency, a proposal to resolve the complaint; and

(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with § 300.506;

(4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

(b) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must—

(1) Permit an extension of the time limit under paragraph (a) of this section only if—

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and

(2) Include procedures for effective implementation of the SEA's final decision, if needed, including—

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance. (c)

(c) Complaints filed under this section and due process hearings under § 300.507 and §§ 300.530 through 300.532.

(1) If a written complaint is received that is also the subject of a due process hearing under § 300.507 or §§ 300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—

(i) The due process hearing decision is binding on that issue; and

(ii) The SEA must inform the complainant to that effect.

(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.

(Authority: 20 U.S.C. 1221e–3)

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§ 300.504 Procedural safeguards notice.

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents—

(1) Upon initial referral or parent request for evaluation;

(2) Upon receipt of the first State complaint under §§ 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year;

(3) In accordance with the discipline procedures in § 300.530(h); and

(4) Upon request by a parent.

(b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under § 300.148, §§ 300.151 through 300.153, § 300.300, §§ 300.502 through 300.503, §§ 300.505 through 300.518, § 300.520, §§ 300.530 through 300.536 and §§ 300.610 through 300.625 relating to—

(1) Independent educational evaluations;
(2) Prior written notice;
(3) Parental consent;
(4) Access to education records;
(5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including—
    (i) The time period in which to file a complaint;
    (ii) The opportunity for the agency to resolve the complaint; and
    (iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
(6) The availability of mediation;
(7) The child's placement during the pendency of any due process complaint;
(8) Procedures for students who are subject to placement in an interim alternative educational setting;
(9) Requirements for unilateral placement by parents of children in private schools at public expense;
(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
(11) State-level appeals (if applicable in the State);
(12) Civil actions, including the time period in which to file those actions; and
(13) Attorneys' fees.

(d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of § 300.503(c).

(Approved by the Office of Management and Budget under control number 1820–0600)

(Authority: 20 U.S.C. 1415(d))

MARSE 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.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE 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.

Related IDEA Federal Regulations

No related IDEA regulations.

MARSE R 340.1855 Failure to comply with correction 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.

Related IDEA Federal Regulations

No related IDEA regulations.

Part 9: Records and Confidentiality
MARSE Rule 340.1861

Note: There are no IDEA Federal Regulations to supplement Part 9 of the MARSE

MARSE R 340.1861 Records; maintenance; content; transfer of records; release of records.
Rule 161.

(1) A registry shall be maintained by intermediate school districts under procedures established by the department and under the provisions of 1976 PA 451, MCL 380.1711, for all students with disabilities, as defined by R 340.1702, including students placed in state and privately operated facilities. The registry shall be an operational, active database system with the capacity to provide up-to-date student counts and other data requirements to the department on a timely basis. Each constituent local school district, public school academy, or state agency shall provide the intermediate school district with a complete updated data record for each student with a disability. The updated record shall contain full-time equivalency data for each student enrolled in a special education program by the student count dates required in the state school aid act, 1979 PA 94, MCL 388.1601 et seq., and shall contain each student's data enrolled in programs and services by the student count date

required by the regulations implementing the individuals with disabilities education act, 34 C.F.R. §300.1 et seq.

(2) If the residency of a student with a disability changes from one intermediate school district to another, then the intermediate school district of previous residence shall transfer the records maintained under this rule to the new intermediate school district upon written request of the intermediate school district of residence and the parent of the student with a disability for whom the record was maintained.

(3) Public agencies shall comply with 34 C.F.R. 300.610 to 300.626.

Part 10: Birth to Three
MARSE Rule 340.1862

MARSE R 340.1862 Individualized family service plan; time lines; eligibility.
Rule 162.

(1) Eligibility for Michigan special education services for all children with a disability birth to age 3 shall be determined by and documented in an individualized family service plan.

(2) Evaluations conducted to determine eligibility for Michigan special education services shall meet the requirements of 34 CFR part 303 and R 340.1705 to R 340.1717.

(3) Determination of eligibility for Michigan special education services, for a child birth to 3 with a disability shall follow all time lines and requirements pursuant to 34 CFR part 303.

(4) Special education services for children birth to 3 with disabilities shall be all of the following:

  (a) Determined by the child's individual needs and specified in an individualized family service plan.

  (b) Provided by an approved or endorsed early childhood special education teacher or approved related services staff.

  (c) Provided for not less than 72 clock hours over 1 year. The time line begins upon receipt of signed parental consent to provide services.

  (d) Provided in an appropriate early childhood setting, school setting, community setting, or family setting.

  (e) Have a parent participation and education component.

(5) Approved related services staff shall work under the educational direction of an approved or endorsed early childhood special education teacher.

Related IDEA Federal Regulations

§ 300.24 Individualized family service plan.

Individualized family service plan or IFSP has the meaning given the term in section 636 of the Act.

(Authority: 20 U.S.C. 1401(15))

§ 300.25 Infant or toddler with a disability.

Infant or toddler with a disability—

(a) Means an individual under three years of age who needs early intervention services because the individual—
  (1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or
  (2) Has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

(b) May also include, at a State's discretion—
  (1) At-risk infants and toddlers; and
  (2) Children with disabilities who are eligible for services under section 619 and who previously received services under Part C of the Act until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under Part C of the Act serving such children shall include—
    (i) An educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and
    (ii) A written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under Part C of the Act or participate in preschool programs under section 619.

(Authority: 20 U.S.C. 1401(16) and 1432(5))

Discipline

Note: There are no Michigan Rules for Discipline

Related IDEA Federal Regulations

§ 300.530 Authority of school personnel.

(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) General.

(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) Services.

(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must—

(i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(5) If the removal is a change of placement under § 300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) Manifestation determination.

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must—

(1) Either—

(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child—

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 300.504.

(i) Definitions. For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) Serious bodily injury has the meaning given the term ‘‘serious bodily injury’’ under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

(4) Weapon has the meaning given the term ‘‘dangerous weapon’’ under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

(Authority: 20 U.S.C. 1415(k)(1) and (7))

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§ 300.531 Determination of setting.

The child’s IEP Team determines the interim alternative educational setting for services under § 300.530(c), (d)(5), and (g).

(Authority: 20 U.S.C. 1415(k)(2))

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§ 300.532 Appeal.

(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 and 300.531, or the manifestation determination under § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by

requesting a hearing. The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b).

(b) Authority of hearing officer.

(1) A hearing officer under § 300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.

(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—

(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 300.530 or that the child's behavior was a manifestation of the child's disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) Expedited due process hearing.

(1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§ 300.507 and 300.508(a) through (c) and §§ 300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.

(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in § 300.506—

(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

(4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§ 300.510 through 300.514 are met.

(5) The decisions on expedited due process hearings are appealable consistent with § 300.514.

(Authority: 20 U.S.C. 1415(k)(3) and (4)(B), 1415(f)(1)(A))

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§ 300.533 Placement during appeals.

When an appeal under § 300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §A300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

(Authority: 20 U.S.C. 1415(k)(4)(A))

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§ 300.534 Protections for children not determined eligible for special education and related services.

(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—

(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency,

or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if—

(1) The parent of the child—

(i) Has not allowed an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(ii) Has refused services under this part; or

(2) The child has been evaluated in accordance with §§ 300.300 through 300.311 and determined to not be a child with a disability under this part.

(d) Conditions that apply if no basis of knowledge.

(1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.

(2)

(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under § 300.530, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the

requirements of §§ 300.530 through 300.536 and section 612(a)(1)(A) of the Act.

(Authority: 20 U.S.C. 1415(k)(5))

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§ 300.535 Referral to and action by law enforcement and judicial authorities.

(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) Transmittal of records.

(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

(Authority: 20 U.S.C. 1415(k)(6))

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§ 300.536 Change of placement because of disciplinary removals.

(a) For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if—

(1) The removal is for more than 10 consecutive school days; or

(2) The child has been subjected to a series of removals that constitute a pattern—

(i) Because the series of removals total more than 10 school days in a school year;

(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b)

(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(2) This determination is subject to review through due process and judicial proceedings.

(Authority: 20 U.S.C. 1415(k))

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§ 300.537 State enforcement mechanisms.

Notwithstanding §§ 300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

(Authority: 20 U.S.C. 1415(e)(2)(F), 1415(f)(1)(B))

Appendix A: United States Code and Implementing Regulations

Individuals with Disabilities Education Act (IDEA)

Regulations Implementing the IDEA

- Part B (Assistance to States for the Education of Children with Disabilities—begins on page 7 of the document)
- Part C (Early Intervention Program for Infants and Toddlers with Disabilities—begins on page 165 of the document)

Family Educational Rights and Privacy Act (FERPA)

Regulations Implementing the FERPA (begins on page 318 of the document)

Elementary and Secondary Education Act (ESEA)

Title 18—Crimes and Criminal Procedure

- Definition of Dangerous Weapon [page 235; § 930(g)(2)]
- Definition of Serious Bodily Injury [page 327; § 1365(h)(3)]

The Rehabilitation Act of 1973

Americans With Disabilities Act

Regulations Implementing the ADA

Appendix B: Michigan Administrative Code and Administrative Rules

Michigan Public Acts

The Revised School Code: Act 451 of 1976

The State School Aid Act of 1979: Act 94 of 1979

Deaf Persons' Interpreters Act: Act 204 of 1982

Administrative Rules Related to Education

Superintendent of Public Instruction

- School District Pupil Accounting for Distribution of State Aid
- Transportation of Nonpublic School Children
- Auxiliary Services for Nonpublic School Children
- Financial Accounting System for Public Schools
- School Social Worker
- Personality Tests
- Certification of School Nurses
- Administrator Certification Code
- School Psychologist Certificate
- School Administrator Continuing Education
- State Aid for Transportation of School Children
- Teachers' Tenure
- Teacher Certification Code
- Certification and Licensure of School Counselors
- Youth Employment Standards

Licensing and Regulatory Affairs

Michigan Administrative Hearing System

- Due Process Procedures for Special Education Hearings
- Bureau of Health Professionals
    - Board of Occupational Therapists—General Rules

- Board of Physical Therapy—General Rules
- Board of Psychology—General Rules
- Board of Social Work—General Rules
- Board of Speech-Language Pathology—General Rules

Michigan Rehabilitation Services

Vocational Rehabilitation

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