

Agency Report to the
JOINT COMMITTEE ON ADMINISTRATIVE RULES

This form must be completed by the department/agency that has the statutory authority for promulgating the rules. Please send an electronic copy of this form to the Office of Regulatory Reinvention at **orr@michigan.gov**. The ORR will review the document, the newspaper advertisements, and the corresponding rules prior to completing the legal certification of the rules. Please be sure to send to the ORR proofs of publication for the three newspaper advertisements required by MCL 24.242(1). You may mail them or send them as a scanned attachment.

Department

Department of Education

Division/agency/bureau:

Office of Special Education

Rule set number (as assigned by ORR)

2013-116 ED

Title of rules:

Special Education Programs and Services

1. Name, address, FAX and phone numbers of agency contact person:

Nancy Rotarius, State Policy Coordinator
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Lansing, MI 48909
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2. Purpose for the proposed rules and background:

The primary purpose of the proposed rules is to address issues surrounding the system of evaluation, the determination of eligibility, and individualized education program (IEP) development. The office of special education met with numerous stakeholders over a period of approximately 1 ½ years to receive input on the proposed rules. Stakeholders included: parent advisory committees, intermediate school districts, local educational agencies, special education service providers, and advocacy groups.

The proposed rules complement state and federal laws that apply to the education of children and students with disabilities. The proposed rules fill gaps in federal language, clarify language, delineate time lines, and incorporate appropriate terminology and legal references.

3. Summary of proposed rules:

The following is a summary of the rule amendments as they were proposed before the public hearings and before the public comment period.

R 340.1701a Definitions; A to D.

- Removes inaccurate language that states a complaint can be filed regarding a violation of a court decision.

R 340.1701b Definitions; I to P.

- Removes the definition of multidisciplinary evaluation team (MET).

R 340.1702 “Student with a disability” defined.

- Changes title to: “Student with a disability” definition and determination of eligibility.
- Clarifies that a student with a disability means a person who has been evaluated and found eligible for special education.
- Replaces Individuals with Disabilities Education Act (IDEA) with 20 U.S.C. chapter 33, §1400 et seq.
- Changes the determination of eligibility to be completed by a defined group of qualified professionals to align with 34 CFR § 300.306.
- Outlines the required members in the group of qualified professionals who will determine eligibility for special education.
- Clarifies that a student with a disability is eligible for special education programs and services until the student has completed the requirements for a regular high school diploma.

R 340.1705 Cognitive impairment; determination.

- Removes the word “determination” from the title.
- Removes language regarding the determination of the impairment by the MET to focus on who will complete the assessments.

R 340.1706 Emotional impairment; determination; evaluation report.

- Removes the words “determination” and “evaluation report” from the title.
- Removes language regarding the determination of the impairment by the MET to focus on who will complete the assessments.

R 340.1707 Hearing impairment explained; determination.

- Changes title and language within the rule to Deaf or Hard of Hearing.
- Removes language regarding the determination of the impairment by the MET to focus on who will complete the assessments.

R 340.1708 Visual impairment explained; determination.

- Removes the words “explained” and “determination” from the title.
- Removes language regarding the determination of the impairment by the MET to focus on who will complete the assessments.
- Removes reference to orientation and mobility report and replaces with documentation of specific recommendations by Orientation and Mobility Specialist.

R 340.1709 “Physical impairment” defined; determination.

- Removes the words “defined” and “determination” from the title.
- Removes language regarding the determination of the impairment by the MET to focus on who will complete the assessments.

- Adds a physician’s assistant to the list of evaluators which is allowable in article 15 of 1978 PA 368, MCL 333.16101 to 333.18838.

R 340.1709a “Other health impairment” defined; determination.

- Removes the words “defined” and “determination” from the title.
- Clarifies that evaluators have to include at least one of those listed.
- Removes language regarding the determination of the impairment by the MET to focus on who will complete the assessments.
- Adds a physician’s assistant to the list of evaluators which is allowable in article 15 of 1978 PA 368, MCL 333.16101 to 333.18838.

R 340.1710 “Speech and language impairment” defined; determination.

- Removes the words “defined” and “determination” from the title.
- Removes language that a student who has a communication disorder, but whose primary disability is other than speech and language, may be eligible for speech and language.
- Removes language regarding the determination of the impairment by the MET.

R 340.1711 “Early childhood developmental delay” defined; determination.

- Removes the words “defined” and “determination” from the title.
- Removes language regarding the determination of the disability by the MET to focus on who will complete the evaluation.

R 340.1713 Specific learning disability defined; determination.

- Removes language that refers to the state making a determination of learning disability.
- Removes the words “defined” and “determination” from the title.
- Removes language regarding the determination of the disability by the MET to focus on who will complete the assessments.

R 340.1714 Severe multiple impairment; determination.

- Removes the word “determination” from the title.
- Removes language regarding the determination of the impairment by the MET to focus on who will complete the assessments.

R 340.1715 Autism spectrum disorder defined; determination.

- Removes the words “defined” and “determination” from the title.
- Adds numbering to make the criteria easier to follow.
- Removes language regarding the determination of the disability by the MET to focus on who will complete the assessments.

R 340.1716 “Traumatic brain injury” defined; determination.

- Removes the words “defined” and “determination” in the title.
- Removes language regarding the determination of the disability by the MET to focus on who will complete the assessments.
- Adds a physician’s assistant to the list of evaluators which is allowable in article 15 of 1978 PA 368, MCL 333.16101 to 333.18838.

R 340.1717 Deaf-blindness defined; determination.

- Removes the words “defined” and “determination” in the title.
- Removes language regarding the determination of the disability by the MET to focus on who will complete the assessments.
- Adds a physician’s assistant to the list of evaluators which is allowable in article 15 of 1978 PA 368, MCL 333.16101 to 333.18838.

R 340.1721 Request for initial evaluation.

- Rescinded since it is duplicated in R 340.1721b.

R 340.1721a Initial evaluation.

- Changes title to: special education personnel consultation with general education personnel.
- Removes R 340.1721a(1) since requirements of evaluations are duplicated in 34 CFR Part 300 and R 340.1721b.
- Maintains language that allows special education personnel who are authorized to conduct evaluations of students suspected of having a disability to provide consultation to the general education personnel.

R 340.1721b Time lines.

- Establishes 30 school days as time for notice following parental consent to the provision of notice. Simplifies language to refer to the provision of notice upon completion of evaluation.
- Removes the option of extending evaluation time lines.
- Removes requirement of parent to provide parental consent for the initial provision of services within 10 school days.
- Requires the receipt of parental consent for the initial provision of services to occur prior to the development of an individualized education program (IEP) or service plan to align with 34 CFR § 300.300.
- Establishes 10 school days as time for development of IEP or service plan following parental consent for the initial provision of services.
- Removes the requirement of notice to identify the location of programs and services as this duplicates the requirements of 34 CFR § 300.320(a)(7).
- Removes language regarding a 15 school day time line to initiate the IEP since this conflicts with 34 CFR 300.323, which requires the IEP to be initiated as soon as possible following its development.

R 340.1721e Individualized education program.

- Removes the requirement for measurable short term objectives for all students.
- Removes language that allows any participant in the IEP who disagrees in whole or in part with the team's determinations to submit a written statement to attach to the report.

R 340.1722 District responsibilities.

- Clarifies that the staff person who is responsible for the implementation of the IEP must be qualified.
- Clarifies that the district is responsible for developing an IEP that is in accordance with 20 U.S.C. chapter 33, §1400 of the IDEA and the Michigan Administrative Rules for Special Education.

R 340.1724d Mediation.

- Removes reference to R 340.1724, which was rescinded in 2010.
- Removes the requirement for the state board to approve mediation process pursuant to Executive Order 1996-12.

R 340.1724f Due process complaints; procedures.

- Removes language that the rule applies to due process complaints filed on or after July 1, 2006.

- Adds time lines for returning documentation of the outcomes of the resolution session to the Michigan Department of Education (MDE).
- Adds time lines for the district to inform the MDE when a party files a civil action in respect to the final administrative law judge decision.

R 340.1724i Reimbursement.

- Removes language that the rule applies to due process complaints filed on or after July 1, 2006.
- Adds 30 day time line for the district of residence, operating district or PSA to reimburse the state 75% of the costs related to the due process hearing.

R 340.1784 Deaf or Hard of Hearing Education Specialist.

- This new rule adds a specialist position for students who are deaf, hard of hearing, or hearing impaired.

R 340.1785 Vision Education Specialist.

- This new rule adds a specialist position for students with visual impairments.

R 340.1799c Teachers of students with hearing impairments.

- Updates language, substituting “deaf or hard of hearing” for “hearing impairment.”
- Revises requirements for teacher education programs for teachers of students who are deaf or hard of hearing, incorporating the requirements of R 340.1782, and adding a provision related to R 340.1781.
- Requires that programs be designed to develop knowledge of the physical and psychological impact of hearing impairment and knowledge of the community and culture of persons who are deaf or hard of hearing.

R 340.1832 Content areas.

- Requires that ISD plans for special education include statements that ensure the following:
 - Written procedures to advise and inform students with disabilities, their parents, and other members of the community of the special education opportunities required under law.
 - Activities and outreach methods used to ensure that all citizens are aware of the availability of special education programs and services.
 - Programs and services designed to meet the educational needs of students with disabilities and in compliance with the rules.
 - Annual review by ISDs, constituent school districts, and public school academies of caseloads and referrals to determine staffing needs.
 - Availability of copies of contracts or service agreements at the ISD pursuant to 1976 PA 451 MCL 380.1751(1)(b).
 - All paraprofessional personnel have a high school diploma.
 - Written procedures for the Parent Advisory Committee that include the appointment process, the role and responsibilities, personnel, fiscal and staff resources.
- Requires descriptions of the following to be included in the plan:
 - The type of diagnostic services, programs, and related services that are available within the ISD and its constituent local school districts and public school academies.
 - The delivery system for the programs and services within the ISD and its

constituent local school districts and public school academies designed to meet the individual needs of students with disabilities.

- Removes requirements for ISD plans related to:
 - ISD proposals of alternative programming.
 - Identification of local school district or public school academy administrators responsible for special education services.
 - Transportation necessary to provide special education programs and services.

4. Name of newspapers and date of publication in newspapers (minimum 3 newspapers of general circulation, representing different parts of the state, one of which must be located in the Upper Peninsula):

Marquette Mining Journal, February 20, 2014
Lansing State Journal, February 21, 2014
Oakland Press, February 20, 2014

5. Time, date, location and duration of public hearing:

- Monday, March 10, 2014, 1:00-3:00 p.m., Detroit School of Arts, 123 Selden St., Detroit, MI 48201
- Monday, March 10, 2014, 4:00-6:00 p.m., Lansing Community College West Campus, 5708 Cornerstone Drive, Lansing, MI 48917

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

March 1, 2014

7. Provide the link the agency used to post the regulatory impact statement on its website:

http://www.michigan.gov/mde/0,4615,7-140-6530_6598-321773--,00.html

8. Agency representative(s) attending hearing (include agency name and title of representative[s]):

Michigan Department of Education, Office of Special Education:
Eleanor White, director
Sheryl Diamond, supervisor
Elizabeth Cooke, consultant
Nancy Rotarius, consultant
Harvalee Sauntos, consultant
Joanne Winkelman, consultant

9. Persons submitting letters, comments and testimony of support:

See attached.

10. Persons submitting letters, comments and testimony of opposition:

See attached.

11. Summary of suggestions to modify proposed rules:

The following includes for each rule: data about public comments, a synopsis of public comments, responses to public comments, and changes to the originally proposed rules as a result of public comments. (Originally proposed rules are summarized in #3, above.) Comments that did not address a particular proposed rule are described at the end of this section.

R 340.1701a Definitions; A to D.

<i>Support:</i>	63.4% (570)
<i>Support With Modifications:</i>	2.5% (22)
<i>Do Not Support:</i>	34.2% (307)

R 340.1701a(c)(v): Comments suggested retaining the language that allows a complaint to be filed regarding a court decision for the following reasons:

1. The complaint is a less costly process for parents to challenge a district's failure to comply with a court decision.
2. The courts are often the last resort on dispute resolution involving disagreements of provision of a Free Appropriate Public Education (FAPE).
3. Removing this language will impact a student's right to FAPE and limit the parent's right to due process.

*Response: **The proposed rule was not changed.** The department has never had the authority to enforce a court decision. This authority falls under the judicial branch of government.*

R 340.1701a(c)(iii) and (v):

1. Comments indicated that recent federal guidance on dispute resolution clearly requires state complaint review of a school district's denial of FAPE. Without the FAPE standard determined by the Supreme Court, any complaint investigation considering a denial of FAPE may be impermissibly narrow.
2. Comments suggested inserting "the implementation of" before "court" in (v).

*Response: **The proposed rule was not changed.** It is beyond the authority of the department to enforce a court decision. Complaints that allege a denial of FAPE will be reviewed in accordance with state rules and federal regulations.*

R 340.1701b Definitions; I to P.

<i>Support:</i>	47.3% (477)
<i>Support With Modifications:</i>	3.5% (35)
<i>Do Not Support:</i>	49.3% (497)

R 340.1701b(b): Comments expressed concern about the removal of the Multidisciplinary

Evaluation Team (MET). The rationales for wanting to maintain this definition included:

1. The removal of this team would result in less comprehensive and less objective evaluations, which will create confusion.
2. Without this team, an evaluation could be conducted without a special education and general education teacher.
3. This creates a barrier for parent participation.
4. This eliminates a well understood, unified term and process.
5. There is a need for this team to review the educational impact of the suspected disability by including the appropriate professionals.
6. The evaluation team provides specific recommendations that link the student's disabilities with instructional programs and services.
7. This change is being pushed to save districts time and money and marginalize psychologists.
8. There could be potential bias, prejudice, discrimination, and errors with only one person held accountable for these responsibilities.
9. This could make it difficult to rule out multiple disabilities.
10. There is no advantage to removing the MET. This practice allows for multiple perspectives without undue power given to one person. This is the cornerstone of eligibility.
11. There is confusion around what process will replace the MET.

Comments in support of removing the MET included the following:

1. This change will not change the makeup of the evaluation teams or the content of the evaluations. It will make the process more efficient.
2. The change of focus from the term MET to eligibility is a positive one in that it is written in a language that is easier for parents to understand.
3. This removes redundancy and cleans up the process by pointing to R 340.1702 for eligibility definition(s).
4. This provides better alignment with the federal regulations and decreases the confusion for terminology within R 340.1862 since it states districts must follow Part C of IDEA for children birth to 3 yet the Michigan Administrative Rules for Special Education (MARSE) are followed. This currently provides contradictory definitions of multidisciplinary (Part C and MARSE define multidisciplinary differently).
5. The requirement for parental inclusion remains, as does the involvement of a well-defined group of professionals to determine eligibility.
6. The MET is not meeting our students' needs. We need a comprehensive team to cover all areas pertinent to a student's education.

*Response: **The proposed rule was changed.** The language regarding the MET was retained. Language was added to indicate that the MET is only for initial evaluations.*

R 340.1702 “Student with a disability” defined; determination of eligibility.

Support:	34.4% (371)
Support With Modifications:	26.2% (283)
Do Not Support:	39.4% (426)

R 340.1702(1): Comments requested that “Individuals with Disabilities Education Act” remain instead of “20 U.S.C. chapter 33, § 1400 et seq.”

*Response: **The proposed rule was not changed.** The statutory citation remains. This is an issue for training and guidance.*

R 340.1702(2):

1. Comment requested clarification on what level of educational impact there needs to be for special education eligibility, especially the magnitude of “need.”

*Response: **The proposed rule was not changed.** This is an issue for training and guidance.*

2. Comments suggested keeping the language that states the IEP team or individualized family service plan (IFSP) team makes eligibility decisions.

*Response: **The proposed rule was not changed.** 34 CFR § 300.306 indicates that eligibility decisions are made by the parent and a group of qualified professionals. Language that supports the IEP team or IFSP team making eligibility decisions does not comply with federal regulations.*

3. Comments expressed concern about a parent being listed as a qualified professional.

*Response: **The proposed rule was changed.** As now proposed, R 340.1702(2) reads “Eligibility and the educational needs of a student shall be determined by a parent and a group of qualified professionals which includes at least the following. . . .” Proposed subsection (c) was removed.*

4. Comments indicated that the person who completes the assessment should be included in the group that determines eligibility.

*Response: **The proposed rule was not changed.** As proposed, R 340.1702(2)(a) indicates that the group of qualified professionals includes a person qualified to interpret the results of evaluations required in R 340.1705 to R 340.1717. This individual is the same as someone who conducts the assessments.*

5. Comments expressed concern about requiring the parent to participate in this process.

*Response: **The proposed rule was not changed.** 34 CFR §300.306 requires that a parent be a participant in the determination of eligibility. When conducting evaluations, parent input must be considered.*

6. Comments indicated that having a general education teacher involved in the determination of eligibility is unnecessary.

*Response: **The proposed rule was not changed.** The inclusion of a general education teacher in eligibility decisions helps to identify the student’s ability to make progress in the general education curriculum by providing an understanding of grade and age level content expectations.*

7. Comments expressed that a general education teacher would not be appropriate as part of

a group of qualified professionals for children who are ages birth to three.

*Response: **The proposed rule was not changed.** The proposed rule language that defines the group of qualified professionals states: “for a child less than school age, an individual qualified by the department to teach a child of his or her age.” This statement allows an early childhood teacher or preschool teacher to be a part of the group determining eligibility.*

8. Comments indicated that not all students will have a general education teacher, for example, those students who participate in center based programs.

*Response: **The proposed rule was changed.** For a student who does not have a general education teacher, the proposed rule now requires that a general education teacher qualified to teach a student of his or her age be included in the group of qualified professionals who determine eligibility and educational needs.*

9. Comments stated that language requiring a person qualified to interpret the results of evaluations and a person who has knowledge of each suspected disability was redundant.

*Response: **The proposed rule was not changed.** This is an issue for guidance and training.*

10. Comments indicated that the qualifications or positions of those listed as qualified professionals should be more specific.

*Response: **The proposed rule was not changed.** This is an issue for guidance and training.*

11. Comments expressed that a related service provider should be added.

*Response: **The proposed rule was not changed.** This is beyond the scope of the proposed rules.*

R 340.1702(3):

Comments indicated that the language, “to have one or more of the impairments specified in this part that necessitates special education or related services or both” should be retained.

*Response: **The proposed rule was changed.** The department retained the current language.*

R 340.1702(4)(b) (originally proposed R 340.1702(3)(b)):

1. Comments expressed concern that students would not be allowed a fifth or sixth year to complete a high school diploma.

*Response: **The proposed rule was not changed.** 34 CFR § 300.305 indicates that eligibility is terminated when graduating from secondary school with a regular diploma. This is a training and guidance issue.*

2. Comments indicated that this did not clarify issues around certificates of completion.

*Response: **The proposed rule was not changed.** This rule addresses the completion of a regular high school diploma as signifying the termination of eligibility for special education programs and services. The certificate of completion is not recognized as a regular high school diploma and does not terminate eligibility. This is a guidance and training issue.*

3. Concerns were raised that students would meet the requirements for a regular high school diploma while not completing transition goals, leaving them unprepared for postsecondary and vocational opportunities.

Response: The proposed rule was not changed. This is a guidance issue. IEP teams need to integrate academic and transition goals. Federal law (34 CFR § 300.305) indicates that eligibility is terminated when a student graduates from secondary school with a regular diploma.

R 340.1705 to R 340.1717

1. Comments related to R 340.1705 through R 340.1717 expressed concern about removing the MET. The comments reflected those about R 340.1701b, in which it was proposed to remove the definition of the MET.

Response: The proposed rules were changed. Language is retained to indicate that initial evaluations and reevaluations must be conducted by a team.

2. Comments requested that the eligibility categories be removed from the rules. It was suggested that Michigan move to a non-categorical model in which students are simply “eligible” or “ineligible.” It was also suggested that the term “impairment” be removed from all eligibility categories.

Response: The proposed rules were not changed. The requested revisions are beyond the scope of this proposed rule set.

3. Comments requested retention of the word “determination” in the titles of the rules.

Response: The proposed rules were not changed. This is a training and guidance issue.

4. Comments requested that the language “full and individual evaluation” be defined.

Response: The proposed rules were not changed. This is a training and guidance issue.

5. Comments suggested that the rules should state that a public agency is obligated to conduct a full and individual evaluation in accordance with federal law.

Response: The proposed rules were not changed. This is a training and guidance issue.

6. Comments suggested the need for clarification of the meaning of the word “assessments.”

Response: The proposed rules were not changed. This is a training and guidance issue.

7. Comments supporting changes to R 340.1705 to R 340.1717 indicated:

- a. The changes align with R. 340.1702 for eligibility definition in general and provide specific evaluators per disability. This is a much clearer practice.
- b. The changes update rules to current terminology and incorporate prior recommended changes.

R 340.1705 Cognitive Impairment.

<i>Support:</i>	54.1% (504)
<i>Support With Modifications:</i>	5.6% (52)
<i>Do Not Support:</i>	40.3% (375)

R 340.1705(1)(b): Comments suggested removing the term “mental age” as it is an inappropriate way to describe individuals.

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of this proposed rule set.*

R 340.1705(1)(e): Comments stated that changing the language in the rule to “adverse effects on...” suggests that there is a different level of impact needed under these rules. For consistency with federal rules, it was suggested that the language “adversely affects” remain.

*Response: **The proposed rule was changed.** Throughout the definition of child with a disability at 34 CFR § 300.8 the language reads “adversely affects a child’s educational performance.”*

R 340.1705(2): Comments suggested that a school psychologist should be a required evaluator. The following rationales were given:

1. Mental health professionals who practice outside of the school setting often have antiquated views and opinions of educational demands in school.
2. The school psychologist is trained to differentiate low achievement from emotional disorders which often co-exist in students.

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of this proposed rule set.*

R 340.1706 Emotional Impairment.

<i>Support:</i>	52.2% (498)
<i>Support With Modifications:</i>	5.2% (50)
<i>Do Not Support:</i>	42.6% (407)

R 340.1706(2): Comments requested that clarification be given to the words “socially maladjusted.”

*Response: **The proposed rule was not changed.** This is an issue for guidance and training.*

R 340.1706(5): Comments requested that additional evaluators be added, including a school psychologist, special education teacher, general education teacher, and social worker.

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of this proposed rule set.*

R 340.1707 Deaf or hard of hearing.

<i>Support:</i>	54.8% (499)
<i>Support With Modifications:</i>	5.1% (46)
<i>Do Not Support:</i>	40.1% (365)

Title of Rule and R 340.1707(1):

The majority of comments supported the change from “hearing impairment” to “deaf or hard of hearing.” In particular, this language change was supported by the following organizations that advocate for individuals who are deaf or hard of hearing: V.O.I.C.E., Inc. (Valley Organization for Improved Communication and Equity), Deaf CAN (Deaf Community Action Network), and the Michigan Chapter of A.G. Bell Association for the Deaf and Hard of Hearing. Some specific comments in support indicated that the deaf community should be identified by the title that they prefer, and that many individuals in the deaf community find the term “hearing impairment” to be offensive.

Some individuals expressed non-support for the change of language from “hearing impairment” to “deaf or hard of hearing,” indicating:

1. This is a step backwards. This will be the only rule that does not use the word “impairment.”
2. This change does not use person-first language; such language would identify a child as a student with a hearing impairment.

*Response: **The proposed rule was not changed.** The department recognizes the important role that organizations and their members who are in support of this rule play in advocating for, educating, and supporting the deaf or hard of hearing community.*

R 340.1707(2): Comments requested that additional evaluators be added. These suggestions included school personnel who can assess and report on the impact of the hearing deficit in school, an audiologist, an ENT physician, a school psychologist, nurse practitioners, and a teacher consultant of the deaf or hard of hearing.

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of the proposed rule set.*

R 340.1708 Visual impairment.

<i>Support:</i>	56.3% (490)
<i>Support With Modifications:</i>	4.8% (42)
<i>Do Not Support:</i>	38.9% (338)

R 340.1708(4): Comments requested that additional evaluators be added, including an ophthalmologist, a teacher who knows the educational implications of the visual impairment, and a school psychologist.

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of the proposed rule set.*

R 340.1709, R 340.1709a, R 340.1716, and R340.1717

In these rules, a physician's assistant was added to the group of evaluators. Those who supported this addition indicated:

1. It is advantageous to have that professional as an option provided that the individual is qualified to contribute to the evaluation for the specific disability in question.
2. Many insurance programs do not readily give families access to doctors when physician's assistants are available for ongoing care and follow up.
3. This aligns with existing law and affords families choices for medical care. Physician's assistants are required to be under the direction of a doctor. Therefore, oversight is built in for accountability.
4. The medical community and the Michigan licensure board determine who is qualified to make a diagnosis. Keeping pace with the medical community by adding a physician's assistant to the recognized list of qualified professionals who may provide input as part of the evaluation is simply an acknowledgement of that individual's expertise.

Comments that did not support the addition of a physician's assistant to the list of evaluators indicated:

1. A physician's assistant is not a qualified person to determine eligibility.
2. Children should be evaluated by those who are trained in pediatrics, not generalists.
3. The involvement of a physician in making eligibility decisions should be retained.
4. Bachelor's level physician's assistants who do not specialize in pediatric evaluations for disabilities should not be on the evaluation team to determine a physical impairment, other health impairment, traumatic brain injury, or deaf-blind.
5. A doctor is needed to provide information as this is a medical diagnosis. A physician's assistant is not a medical doctor.
6. A physician's assistant does not have enough training and this further eliminates the school psychologists.
7. Physician's assistants do not have training in neuro-development.
8. Having a physician's assistant conduct the evaluation may increase legal issues and requests for independent educational evaluations.
9. Concerns were raised that the use of a physician's assistant was intended to save districts money at the expense of students with disabilities.

*Response: **The proposed rules were not changed.** A physician's assistant was added to the list of evaluators because of the recognition of the role of physician's assistants in article 15 of 1978 PA 368, MCL 333.16101 to 333.18838. The physician's assistant must be under the supervision of a physician. The proposed rules do not eliminate physicians.*

Comments asked for language that a physician's assistant needs to be under the supervision of a physician.

*Response: **The proposed rules were not changed.** This would duplicate the public health code.*

R 340.1709 Physical impairment.

<i>Support:</i>	51.1% (486)
<i>Support With Modifications:</i>	10.5% (100)
<i>Do Not Support:</i>	38.5% (366)

R 340.1709(2): Comments requested that additional evaluators be added. These suggestions included an occupational therapist, physical therapist, school psychologist, social worker, nurse practitioner, school based personnel, and a teacher consultant for students with physical impairments.

Response: The proposed rule was not changed. The requested change is beyond the scope of the proposed rule set.

R 340.1709a Other health impairment.

<i>Support:</i>	48.2% (480)
<i>Support With Modifications:</i>	12.2% (121)
<i>Do Not Support:</i>	39.6% (394)

R 340.1709a(1): Comments expressed concern that the language “that may include any of the following” implies that the list of impairments is inclusive although there is a vast array of other physical impairments that would enable qualification for eligibility beyond those listed.

Response: The proposed rule was not changed. The federal definition of the word “include” at 34 §CFR 300.20 is: “Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.”

R 340.1709a(2):

1. Comments requested that additional evaluators be added. These suggestions included a psychologist, nurse practitioner, school psychologist, psychiatrist, school based personnel, school social worker, and non-specified professionals from the mental health field.

Response: The proposed rule was not changed. The requested revision is beyond the scope of this proposed rule set.

2. Comments stated that the addition of the term “assessment” is a concern. The term is not defined and leaves room for interpretation.

Response: The proposed rule was not changed. This is an issue for guidance and training.

R 340.1710 Speech and language impairment.

Support:	48.7% (474)
Support With Modifications:	9.6% (93)
Do Not Support:	41.8% (407)

R 340.1710(1): Comments expressed that the change from “such as” to “including” leads to a potentially limited interpretation of a speech and language disability to only: language impairment, articulation, fluency, or voice.

*Response: **The proposed rule was changed.** 34 § CFR 300.20 states: “Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.” The proposed language was changed from “including” to “and may include a.”*

R 340.1710(3)(b): Comments suggested eliminating the specific requirements of the assessments in order to allow professional discretion to determine appropriate assessments.

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of this proposed rule set.*

R 340.1710(4) (currently R 340.1710(5)):

1. Comments requested that additional evaluators be added. These suggestions included a speech and language pathologist and school psychologist.

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of this proposed rule set.*

2. Comments expressed concern that schools will interpret the removal of current R 340.1710(4) to mean that students cannot receive speech and language services if they are not qualified under speech and language impairment.

*Response: **The proposed rule was not changed.** 34 CFR § 300.8 reaffirms that special education and related services are based on the identified needs of the child and not on the disability category in which the student is classified. This is an issue for training and guidance.*

R 340.1711 Early childhood developmental delay.

Support:	53.2% (480)
Support With Modifications:	6.8% (61)
Do Not Support:	40.1% (362)

Comments asked for clarification of whether R 340.1702 applies to R 340.1711 since this rule refers to a child, not a student.

*Response: **The proposed rule was not changed.** This is a training and guidance issue. The definition of a “student with a disability” in R 340.1702 applies to a student who is*

eligible under this rule.

R 340.1711(1): Comments expressed that using ½ developmental age is not best practice because many assessments state that age equivalencies should be used. Additionally, for birth to 3 years old, the characteristics that are indicative of educational success should be evaluated.

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of the proposed rule set.*

R 340.1711(2):

1. Comments expressed that, with elimination of reference to the MET, there is no definition of the professionals involved in assessing a child for “early childhood developmental delay.”

*Response: **The proposed rule was changed.** Language is retained to indicate that initial evaluations and reevaluations must be conducted by a team.*

2. Comments requested that additional evaluators be added. These suggestions included a psychologist, speech and language pathologist, occupational therapist, physical therapist, special education teacher, school based personnel, school social worker, and nurse practitioner.

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of the proposed rule set.*

R 340.1713 Specific learning disability.

<i>Support:</i>	52.2% (490)
<i>Support With Modifications:</i>	6.7% (63)
<i>Do Not Support:</i>	41.0% (385)

1. Comments expressed concern that this rule language does not align with IDEA, which requires determination to include a pattern of strengths and weaknesses.
2. Comments indicated that response to intervention should be included as part of determining eligibility.

*Response: **The proposed rule was not changed.** The requested revisions are beyond the scope of this proposed rule set.*

R 340.1713(3)(b):

1. Comments requested that additional evaluators be added. These suggestions included a psychologist, speech and language pathologist, teacher consultant, physician, special education teacher, school social worker, general education teacher, and a school psychologist.

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of the proposed rule set.*

2. The “such as” language should be retained, rather than changing it to “including.” The change may result in interpretation of this rule that leads to withholding services to

students who have otherwise qualified under the existing wording.

Response: The proposed rule was not changed. 34 § CFR 300.20 states: “Include means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.”

R 340.1714 Severe multiple impairment.

Support:	55.4% (486)
Support With Modifications:	4.3% (38)
Do Not Support:	40.3% (353)

R 340.1714(1)(a)(i) and (b)(i): Comments suggested that hearing impairment be changed to deaf or hard of hearing.

Response: The proposed rule was not changed. In this rule, the language “hearing impairment” is being used to refer to a condition and the language “deaf or hard of hearing” would not be appropriate.

R 340.1714(2): Comments requested that additional evaluators be added. These suggestions included an occupational therapist, physical therapist, teacher consultant of hearing impaired or visually impaired, school psychologist, and a school social worker.

Response: The proposed rule was not changed. The requested revision is beyond the scope of the proposed rule set.

R 340.1715 Autism spectrum disorder.

Support:	43.1% (462)
Support With Modifications:	13.2% (141)
Do Not Support:	43.8% (469)

Comments indicated that the language of this rule should be aligned with the DSM-V.

Response: The proposed rule was not changed. The requested revision is beyond the scope of this proposed rule set.

R 340.1715(1): Comments requested that the word “lifelong” be removed.

Response: The proposed rule was not changed. The requested revision is beyond the scope of this proposed rule set.

R 340.1715(3)(a)(i) and (b)(i): Comments requested maintaining “such as” because using the term “including” suggests that a student will have to exhibit all of the listed behaviors in order to qualify, which may disqualify students with autism who need special education services.

Response: The proposed rule was changed. 34 § CFR 300.20 states: “Include means

that the items named are not all of the possible items that are covered, whether like or unlike the ones named.” In the proposed rule, “that may include” was substituted for “including.”

R 340.1715(5):

1. Comments asked that R 340.1715(5) be eliminated in its entirety because it is no longer needed.
2. Comments asked that “while autism spectrum disorder may exist concurrently with other diagnoses or areas of disability...” be maintained in R 340.1715(5).

*Response: **The proposed rule was not changed.** The requested revisions are beyond the scope of this proposed rule set.*

R 340.1715(6):

1. Comments indicated that a school psychologist, general education teacher, and occupational therapist should be included in the evaluation.

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of this proposed rule set.*

2. Parent input should be included in the evaluation.

*Response: **The proposed rule was not changed.** Parental input in the evaluation process is required at 34 CFR §300.304(b)(1).*

R 340.1716 Traumatic brain injury.

<i>Support:</i>	50.6% (473)
<i>Support With Modifications:</i>	10.1% (94)
<i>Do Not Support:</i>	39.4% (368)

R 340.1716(3): Comments indicated that the following should be included in the list of evaluators: school psychologist, psychologist, nurse practitioner, neuro-psychologist, mental health professional, and school based personnel.

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of this proposed rule set.*

R 340.1717 Deaf-blindness.

<i>Support:</i>	52.5% (470)
<i>Support With Modifications:</i>	9.6% (86)
<i>Do Not Support:</i>	38.0% (340)

Comment suggested deaf-blindness should include the word “impairment” as with other disabilities.

Response: The proposed rule was not changed. The requested revision is beyond the scope of this proposed rule set.

R 340.1717(2): Comments indicated that the following should be included in the list of evaluators: nurse practitioners and teacher consultants of vision and hearing impaired.

Response: The proposed rule was not changed. The requested revision is beyond the scope of this proposed rule set.

R 340.1717(2)(a):

1. Comments indicated that evaluation by at least two medical specialists, particularly an ophthalmologist, optometrist, or audiologist should be required.

Response: The proposed rule was not changed. The requested revision is beyond the scope of this proposed rule set.

2. Comments indicated that evaluation by at least three medical specialists, particularly an audiologist, otolaryngologist, or otologist, and an ophthalmologist or an optometrist should be required.

Response: The proposed rule was not changed. The requested revision is beyond the scope of this proposed rule set.

R 340.1721 Rescinded.

Support:	63.5% (559)
Support With Modifications:	3.0% (26)
Do Not Support:	33.6% (296)

1. Comments indicated that the current rule includes language that the request to evaluate will be requested only when necessary, and that R 340.1721b does not contain a similar provision.

Response: The proposed rescission of this rule was not changed. This concern will be addressed in R 340.1721b.

2. Comments addressed concerns about evaluation time lines and parental consent for special education services.

Response: The proposed rescission of this rule was not changed. The department addresses these concerns in R 340.1721a and R 340.1721b.

R 340.1721a Initial evaluation.

Support:	58.9%(541)
Support With Modifications:	6.8% (62)
Do Not Support:	34.4% (316)

R 340.1721a(1): Comments repeated concerns found in R 340.1701b and R 340.1705 to R 340.1717 regarding the removal of the MET.

*Response: **The proposed rule was changed.** The language that refers to the MET participating in the initial evaluation was retained.*

R 340.1721a(2):

1. Comments asked for clarification about which special education personnel are qualified to conduct evaluations.

*Response: **The proposed rule was not changed.** This is an issue for guidance and training.*

2. Comments asked for clarification about what activities are involved in consultation.

*Response: **The proposed rule was not changed.** This is an issue for guidance and training.*

3. Comments asked to add language regarding consultation for prevention and multi-tiered systems of support.

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of this proposed rule set.*

4. Comments indicated that this rule is redundant and that it is common for staff to provide consultation for students who are suspected of having a disability.

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of this proposed rule set.*

R 340.1721b Time lines.

<i>Support:</i>	27.4% (303)
<i>Support With Modifications:</i>	33.0% (366)
<i>Do Not Support:</i>	39.6% (439)

1. General comments of support included: “These are good changes and well thought out. It is good to see the separation of the evaluation, determination of eligibility, and the IEP development process as it makes it easier to understand. It also lines up better with the IDEA, which should help avoid confusion.”
2. Comments about the time lines in this rule indicated:
 - a. Ten days are not adequate to develop an IEP.
 - b. An extra 10 school days for developing an IEP should be available to the district.
 - c. Concerns were expressed about the lack of specificity in the language.
 - d. The rule should include federal language which indicates a 60 day time line from receipt of parental consent.
 - e. Some opposed changing the 30 day time line to no longer include the IEP team meeting.
 - f. Parents should be given 10 school days following the offer of FAPE to consider everything before they agree or disagree.
 - g. There is a burden placed on parents to attend two meetings.

h. This proposed rule could be improved by clarifying that an eligibility determination and an IEP meeting can be conducted on the same day.

i. Comments indicated concerns about the implementation of the IEP occurring as soon as possible.

j. Comments indicated that there were no specific time lines about the implementation of the IEP.

*Response: **The proposed rule was changed.** Proposed subrule (4) was changed to read: "Unless a parent has filed an appeal under R 340.1724f, the public agency, as defined under 34 CFR § 300.33, shall implement an individualized education program immediately after the notice of provision of a free appropriate public education." Other suggestions are beyond the scope of this proposed rule set or are issues for training and guidance.*

R 340.1721b(1): Comments indicated that language that allows for extensions to initial evaluation time lines needs to be maintained. Concerns about the removal of extensions included:

1. Extensions serve the interests of families who may be unable to participate in the process if reasonable extensions are not allowed.
2. Parents and districts need the flexibility of extensions.
3. This option is needed due to student illness, multiple professionals evaluating, or circumstances beyond the district's control.
4. The option of extensions is needed to obtain information from outside sources such as family physicians or medical specialists.
5. Not having access to extensions may require districts to determine that a student is ineligible and may need to be re-evaluated when more information is available.
6. Allowing extensions aligns with multi-tiered systems of support (MTSS) practices and gives up to 6 weeks of intervention data.
7. IDEA commentary to 34 CFR § 300.301(d) at page 46637 states "a state could adopt a time frame of 60 days or some other number of days, with additional exceptions."

*Response: **The proposed rule was not changed.** With additional days being added to the time line for initial evaluations, the department does not find the use of extensions to be in the best interest of students who may be in need of special education programs and services.*

R 340.1721b(2):

1. Comments indicated that language needs to be added to R 340.1721b to address that consent is not necessary when the district provides notice that it will not be conducting an evaluation.

*Response: **The proposed rule was not changed.** This is an issue for guidance and training.*

2. Comments expressed concern about parents being required to provide consent for initial provision of services prior to development of the plan for those services.

*Response: **The proposed rule was not changed.** 34 CFR § 300.300 states that the public agency must obtain informed consent prior to the initial provision of special education and related services. The public agency is not considered in violation of the*

requirement to make FAPE available, convene an IEP team meeting, or develop an IEP if the parent does not provide this consent. A public agency should provide the parents with as much information as possible about their child's educational needs in order to encourage them to agree to the provision of special education services to meet those needs.

R 340.1721b(3):

1. Comment indicated that this section should read, "The public agency shall develop, as appropriate, an IEP and provide the parent notice of an offer of FAPE consistent with 34 CFR 300.503 or service plan."
2. Comments indicated that guidance will be needed about the adding of language re: a service plan.

*Response: **The proposed rule was not changed.** These are issues for guidance and training.*

R 340.1721b(5): Comments recommended clarifying that proposed subsection (5)'s 30 school day standard applies only to transfers between districts, not to implementation of all IEPs. It was further recommended that implementation of an IEP be changed to adoption of an IEP to prevent confusion about when services should begin when a student moves to another district.

*Response: **The proposed rule was not changed.** This is an issue for guidance and training.*

R 340.1721e Individualized education program.

<i>Support:</i>	45.7% (558)
<i>Support With Modifications:</i>	14.2% (174)
<i>Do Not Support:</i>	40.1% (490)

Comments on this rule indicated that language should be changed to read, "An IEP shall be developed pursuant to 34 CFR Part 300 and shall include all the requirements of § 300.320. The need for extended school year shall be determined pursuant to § 300.106."

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of the proposed rule set.*

R 340.1721e(1): Comments in support of removing short-term objectives indicated:

1. This aligns with federal regulation, 34 CFR §300.320(a)(2), that requires short-term objectives only for students with disabilities who take alternate assessments aligned to alternate academic achievement standards.
2. Measurable annual goals should be sufficient for most students with an IEP.
3. If goals are observable, measurable, and specific, there is no need for short-term objectives.
4. The focus should be on writing measurable goals that are specific, measurable, achievable, realistic, and time-bound.

5. This will allow parents to have a clearer understanding of the student's goals.
6. Having annual goals and short-term objectives causes confusion within the field and among practitioners.
7. In order to support students' participation in general education, goals should be based on the common core curriculum. Small goals that are difficult to measure based on the curriculum should not be set.
8. Removing the requirement does not mean that parents and staff cannot set short-term objectives to monitor progress and establish long-term goals.
9. Short-term objectives cause teachers to collect extra data and use time that would be better spent focusing on what students need.

Comments that indicated concern about the removal of short-term objectives included:

1. It will be hard to track and measure progress without them.
2. Short-term objectives guide formative assessment.
3. Short-term objectives are important for higher incident populations who utilize the general education curriculum.
4. An annual goal without objectives is not measurable.
5. IDEA requires measurable goals and short-term objectives for all students who take alternate state assessments. For consistency purposes, Michigan should continue to adopt that standard for all students.
6. Without interim measurement, parents would not necessarily find out if the child was ahead or behind goals until it was too late to do anything about it.
7. Without short-term objectives, the only remaining measure of educational benefit is the annual goals.
8. Parents of students with disabilities expressed how short-term objectives have helped them monitor their children's progress and how this has helped their children to progress.
9. Short-term objectives hold teachers accountable and facilitate collection of data to show what has been achieved and how a student is progressing toward the goal.

*Response: **The proposed rule was not changed.** Concerns about goal writing and the measurement of student progress are guidance and training issues.*

R 340.1721e(2)(a)(iii): Comments requested that "may" be changed to "shall."

*Response: **The proposed rule was not changed.** The use of the word "shall" would not be appropriate in this context.*

R 340.1721e(3): Comments that do not support the removal of the ability to attach a dissenting report to the IEP indicated:

1. This is a critical component of the IEP/MET process.
2. Proposed language may be interpreted to deny parents the right to include their written input in the IEP.
3. It is important that parents and educators have a formal way to dissent to a student's IEP.
4. When there is not a consensus regarding eligibility, differences could be critical in determining the effectiveness of the IEP.
5. Eliminating a dissenting report removes access to critical information for meeting students' needs and to pertinent discussions that occurred during the IEP team meeting.

6. There may be instances in which someone does not agree with the decision of the IEP and he or she should have an avenue to express that, especially if there are legal ramifications or if the IEP is the subject of a due process complaint.

*Response: **The proposed rule was not changed.** 34 CFR § 300.503(a)(2) indicates that a district must provide notice to parents when it “[r]efuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.” The notice must include a description of the action proposed or refused by the agency and an explanation of why the agency proposes or refuses to take the action. Therefore, when there is disagreement in the determination of eligibility or development of the IEP, the notice, not a separate report, should contain dissenting information.*

R 340.1722 District responsibilities.

<i>Support:</i>	67.6% (573)
<i>Support With Modifications:</i>	5.5% (47)
<i>Do Not Support:</i>	26.9% (228)

R 340.1722(1)and (2): Comments requested that:

1. The term “qualified” be defined when referring to the staff person responsible for implementing the IEP.
2. Language be changed to: “qualified special education provider” or “special education certified teacher.”

*Response: **The proposed rule was not changed.** This is an issue for training and guidance.*

R 340.1722(2)(a): Comments requested that this subrule be removed because a principal cannot be responsible for all IEPs in the building.

*Response: **The proposed rule was not changed.** The requested revision is beyond the scope of the proposed rule set. The proposed rule requires that the principal or another qualified staff person be responsible for implementing the IEP.*

R 340.1724d Mediation.

<i>Support:</i>	68.5% (550)
<i>Support With Modifications:</i>	1.0% (8)
<i>Do Not Support:</i>	30.5% (245)

R 340.1724d(2): Comments expressed concern about removing “the state board of education shall approve procedures regarding the mediation process.”

*Response: **The proposed rule was not changed.** The requirement for the state board to approve the mediation process was removed pursuant to Executive Order 1996-12.*

R 340.1724f Due process complaints; procedures.

Support:	60% (497)
Support With Modifications:	6.4% (53)
Do Not Support:	33.7% (279)

Comments that supported the time lines stated, “By adding time lines the district is more accountable for submitting their response. This should make the due process system more effective.”

R 340.1724f(1): Comments expressed concern about removing language that the rule only applies to due process complaints filed on or after July 1, 2006.

*Response: **The proposed rule was not changed.** This language was only necessary until the final complaint filed under the pre-2006 due process system was closed. That has occurred and this language can now be removed.*

R 340.1724f(5):

1. Comments expressed concern that the citation to MCL 380.1766 is not correct.
*Response: **The proposed rule was changed.** The reference is to article 3 of the Revised School Code and has been amended as necessary.*
2. Comments suggested stating whether the reference to “days” means school days or calendar days.
*Response: **The proposed rule was not changed.** Consistent with 34 CFR § 300.300.11(a), “day” means calendar day unless it is otherwise indicated as business day or school day. This is a training and guidance issue.*

R 340.1724f(7): Comments expressed concern that the 45 day time line for filing an appeal of an administrative law judge decision is too short.

*Response: **The proposed rule was not changed.** Shortening the appeal period from 90 days to 45 days, which was supported by a significant majority of comments, is based on the fact that, the longer the appeal period, the longer the delay before programming and services are implemented for a child.*

R 340.1724f(8):

1. Comments suggested revising the language to reflect the fact that a district may not always be immediately aware of the filing of a civil action.
*Response: **The proposed rule was changed.** The proposed rule now requires a district to inform the department within 10 days after it files a civil action or within 10 days of when it is notified that a civil action has been filed.*
2. Comments indicated disagreement with requiring school districts to notify the department when a parent files a civil action.
*Response: **The proposed rule was not changed.** This rule is necessary so that the department, which may be asked to provide documents relating to a civil action, is aware when such an action is pending.*

R 340.1724i Reimbursement.

Support:	53.5% (427)
Support With Modifications:	3.4% (27)
Do Not Support:	43.1% (344)

Comments questioned the removal of the reference to complaints filed after July 1, 2006.

*Response: **The proposed rule was not changed.** This language was only necessary until the final complaint filed under the pre-2006 due process system was closed. That has occurred and this language can now be removed.*

Comments stated disagreement with adding a time line for reimbursement of due process hearing costs.

*Response: **The proposed rule was not changed.** The department has the authority to set time lines for reimbursement.*

Comments suggested that the 30-day time line for reimbursement is too short. Some suggested a time line of 60 or 90 days.

*Response: **The proposed rule was changed.** The proposed time line was increased to 45 days.*

Comments stated disagreement with the requirement that districts reimburse the state 75% of the costs of due process hearings.

*Response: **The proposed rule was not changed.** The 75% reimbursement requirement is statutory. MCL 380.1752.*

Comments suggested stating whether the reference to “days” means school days or calendar days.

*Response: **The proposed rule was not changed.** Consistent with 34 CFR § 300.300.11(a), “day” means calendar day unless it is otherwise indicated as business day or school day. This is a training and guidance issue.*

R 340.1784 Deaf or hard of hearing education specialist.

Support:	55.5% (504)
Support With Modifications:	8.3% (75)
Do Not Support:	36.3% (330)

Comments opposed to the addition of this specialist position were:

1. If this is currently an area of shortage, the rule should provide that this will be revisited if the shortage subsides.
2. A more appropriate and student-focused alternative to addressing the shortage of teacher consultants would be to encourage universities to offer grants and tuition forgiveness

- programs to attract candidates rather than requiring less education and experience.
3. This rule waters down the requirements for teaching students who are deaf or hard of hearing.
 4. This rule sounds like a job description rather than qualifications. The qualifications should be outlined in detail. As proposed, it appears that the specialist could be a newly certified teacher with no experience. This would minimize the education, experience, and qualifications necessary to perform the job of a specialist.

*Response: **The proposed rule was not changed.** Students who are deaf or hard of hearing are underserved in receiving the services they need to succeed in school because there is a shortage of teacher consultants for such students. A teacher certified in deaf or hard of hearing who is a specialist will be able to work in several capacities in schools, which will allow flexibility to meet students' needs. The majority of comments supported this rule.*

Comments that requested modification of the proposed rule questioned why this proposed rule does not include a provision like that in R 340.1785(2)(h) that allows the specialist to identify and coordinate accommodations and modifications to help a student access the general education curriculum.

*Response: **The proposed rule was not changed.** R 340.1784(2)(h) indicates that the specialist may provide assistance to teachers and professionals regarding appropriate modifications and adaptations.*

R 340.1784(2)(a): Comments expressed concern that a deaf or hard of hearing specialist is the only person who will be evaluating a student suspected of being a student who is deaf or hard of hearing.

*Response: **The proposed rule was not changed.** This rule allows a deaf or hard of hearing specialist to make assessments. However, a public agency must comply with R 340.1707 when determining eligibility in the category of deaf or hard of hearing. R 340.1707 requires that an audiologist and an otolaryngologist or an otologist complete assessments for determining eligibility.*

R 340.1784(2)(e) (as originally proposed): Comments expressed concern that the proposed rule does not limit caseloads for this position, in which an individual will be providing both consultation and direct instruction. Comments also asked that “from birth to age 26” be changed to “eligible students.”

*Response: **The proposed rule was changed.** A specialist does not have a caseload or provide direct instruction. The department removed the proposed R 340.1784(2)(e), which read: “Provide consultation and direct services to students from birth to age 26.”*

R 340.1784(2)(f) (now proposed R 340.1784(2)(e)): Comments asked for removal of “on behalf of students who are deaf or hard of hearing.”

*Response: **The proposed rule was changed.** The referenced language was deleted.*

R 340.1784(2)(k) (now proposed R 340.1784(2)(j)):

1. Comments questioned if this specialist is qualified to complete functional behavioral

assessments and behavior improvement plans, suggesting that this is part of a team process.

*Response: **The proposed rule was not changed.** The development of functional behavioral assessments and behavior improvement plans is a team process. This is an issue for training and guidance.*

2. Comments asked that “Complete functional assessments and create behavior intervention plans” be changed to “Complete functional behavioral assessments and create positive behavior support plans.”

*Response: **The proposed rule was changed.** The proposed language is now “Complete functional behavioral assessments and create positive behavior intervention plans.”*

R 340.1784(2)(o) (now proposed R 340.1784(2)(n)): Comments suggested that all students with disabilities should be assisted to learn self-advocacy skills and questioned why this role is only identified for students who are deaf or hard of hearing.

*Response: **The proposed rule was not changed.** The addition of this language to other rules is beyond the scope of the proposed rule set.*

R 340.1785 Vision education specialist.

<i>Support:</i>	58.0% (498)
<i>Support With Modifications:</i>	7.2% (62)
<i>Do Not Support:</i>	34.7% (298)

Comments opposed to addition of this specialist position were:

1. Requirements should not be lessened simply because there is a shortage of teachers.
2. With a Michigan and national shortage of teachers of students who are visually impaired, there should be a mechanism to develop experienced, highly degreed educators to assume this role to serve this low incident population.

*Response: **The proposed rule was not changed.** Students who are visually impaired are underserved in receiving the services they need to succeed in school because there is a shortage of teacher consultants for such students. A teacher certified with an endorsement in vision impairment who becomes a specialist will be able to work in several capacities in schools, which will allow flexibility to meet students’ needs. The majority of comments supported this rule.*

R 340.1785(2): Comments suggested elimination of this subrule, which was described as sounding like a job description rather than delineating the qualifications and educational requirements of the specialist position.

*Response: **The proposed rule was not changed.** This is an issue for training and guidance.*

R 340.1785(2)(i): Comments requested removal of “for the visually impaired student.”

*Response: **The proposed rule was changed.** The referenced language was deleted.*

R 340.1799c Teachers of students who are deaf or hard of hearing; special requirements.

<i>Support:</i>	65.3% (526)
<i>Support With Modifications:</i>	3.7% (30)
<i>Do Not Support:</i>	30.9% (249)

Comments supported the addition of the competency of knowledge of the physical impacts of severe and profound hearing impairment. (R 340.1799c(2)(j)).

The majority of comments supported changing “hearing impairment” to “deaf or hard of hearing,” although there were also comments that “deaf or hard of hearing” should be “deaf and hard of hearing.” A few comments that did not support changing “hearing impairment” to “deaf or hard of hearing” stated that “deaf or hard of hearing” is archaic and does not support the concept of person-first language.

*Response: **The proposed rule was not changed.** Many organizations that advocate for, educate, and support the deaf and hard of hearing community support this amendment. The department recognizes the important role of such organizations.*

R 340.1799c(2)(j): Comments questioned why this subrule is limited to those who have severe and profound hearing impairment.

*Response: **The proposed rule was not changed.** This is an issue for training and guidance.*

R 340.1832 Content areas.

<i>Support:</i>	40.1% (396)
<i>Support With Modifications:</i>	21.6% (213)
<i>Do Not Support:</i>	38.3% (378)

Comments about this rule that were general in nature and thus did not require specific department response included:

1. Transparency is being removed from ISD plans.
2. There is a lack of standards governing state review and approval of ISD plans, there is a limited ability to object, and there is lack of periodic review and revision of the plans.

Comments expressed concern that the changes to the ISD special education plans would result in a return to the waiver process, which was daunting and time-consuming for districts.

*Response: **The proposed rule was not changed.** The language in R 340.1832(2)(e) about alternative programs and services is being removed to assure compliance with state law. Currently, waivers are being written into ISD plans that have no specific time line for review. According to MCL 380.1281(3), waivers must be reviewed every three years. Waivers are reviewed under a separate approval process in the department.*

R 340.1832(2):

1. Comments requested that “plan shall ensure” be changed to “plan shall assure.”
*Response: **The proposed rule was not changed.** The word “ensure” is the appropriate word in the context of this rule.*
2. Comments expressed concern about districts being able to determine caseloads, class sizes, age spans, and other program standards currently set by rule.
*Response: **The proposed rule was not changed.** Rules regarding these matters are found in Part 3 of the special education rules and are not a part of the proposed rule set.*

R 340.1832(2)(d):

1. Comments indicated that “education caseloads” should be changed to “special education caseloads.”
*Response: **The proposed rule was changed.** The requested change was made.*
2. Comments requested that “review education caseloads and referrals” be changed to “review education workloads, including evaluations and service delivery.”
*Response: **The proposed rule was not changed.** The term “caseload” is used throughout the rules.*
3. Comments indicated that annual review of caseloads is inadequate to monitor the regular fluctuation of caseloads.
*Response: **The proposed rule was not changed.** The department recognizes that caseloads should be continuously monitored. The assurance statement described in this subrule requires districts to provide evidence that they review caseloads at least annually. A district must remain in compliance with caseload rules at all times.*

R 340.1832(2)(e):

1. Comments requested that the reference to alternative special education programs and services be retained to avoid termination of current alternative programs.
*Response: **The proposed rule was not changed.** R 340.1832(4) requires an ISD plan to describe the delivery system for programs and services. This allows alternative programs (e.g. leveled systems that allow students to be placed according to their instructional levels, not their disability categories) that are not like those described in part 3 of the rules. The proposed rule does not affect caseload and age span requirements.*
2. Comments indicated that the reference to alternative programs should remain and that this subrule should also state, “Plans that include alternate programs will be reviewed every three years, consistent with the requirements of the school code 1281(3).”
*Response: **The proposed rule was not changed.** Section 1281(3) of the Revised School Code, MCL 380.1281(3), refers to waivers of administrative rules and does not address the separate process of developing alternate programs.*
3. Comments indicated that maintaining contracts and service agreements at the ISD may impede public access to this information and may lead to the filing of freedom of information act requests to obtain it.
*Response: **The proposed rule was not changed.** MCL 380.1751(1)(b) requires that copies of contracts or service agreements be on file at the ISD.*

R 340.1832(2)(g) (current rule): Comments questioned why the language is being removed that requires the ISD plan to identify the local district or public school academy administrator who is responsible for implementation of special education.

*Response: **The proposed rule was not changed.** R 340.1832(2)(g) duplicated R 340.1832(2)(a), which requires the ISD plan to include identifying information about representatives who can provide information about special education.*

R 340.1832(2)(g) (proposed rule): Comments in support of this proposed rule indicated that requiring a high school diploma for a paraprofessional guarantees a level of academic skills that can support the needs of students. Comments that questioned this proposed rule were:

1. "Have a high school diploma" should be "Have a high school diploma or equivalent."

*Response: **The proposed rule was not changed.** This is beyond the scope of the proposed rule set.*

2. Paraprofessionals should have more training than a high school diploma because they often support students by providing direct instruction.

*Response: **The proposed rule was not changed.** R 340.1793, which is not part of these proposed rules, states, "Paraprofessional personnel employed in special education programs shall be qualified under requirements established by their respective intermediate school district plan." Currently, ISD plans provide that a paraprofessional must have a high school diploma.*

R 340.1832(2)(i) (current rule, proposed to be rescinded):

1. Comments questioned who will be responsible for transportation if a description of transportation necessary for special education is not required in the ISD plan.

*Response: **The proposed rescission of this subrule was not changed.** A student's IEP team is responsible for determining whether specialized transportation is necessary in order for the student to receive FAPE. The provision of specialized transportation is required when indicated in the IEP. Regardless of who is providing the transportation, it is ultimately the responsibility of the public agency to assure that the IEP is implemented.*

2. Comments expressed concern that, without the requirement that transportation be addressed in the ISD plan, districts will impose excessive travel times on students with disabilities.

*Response: **The proposed rescission of this subrule was not changed.** There is nothing in the current rule that authorizes or requires ISDs to limit transportation times. This is a matter to be determined at the district level.*

R 340.1832(3): Comments requested that the rule say: "The plan shall describe the diagnostic services related to the evaluation and the provision of special education that are available."

*Response: **The proposed rule was not changed.** This is an issue for training and guidance.*

Comments that did not address a particular proposed rule indicated the following concerns:

1. These changes are being proposed to save money and will result in funding cuts and closing of programs.

Response: There is nothing in the proposed rules that will result in funding cuts or the closing of programs.

2. Proposed changes were not widely publicized; more individuals should have been included in the development of the proposed rules.

Response: During the 1 ½ year period preceding submission of the proposed rules to the Office of Regulatory Reinvention for initiation of the formal rule making process, the Office of Special Education made 20 presentations about the proposed changes in venues throughout the state. At those events, feedback was sought from a variety of interested persons, including parents, parent advisory committees, intermediate school district administrators and other personnel, local educational agency administrators and other personnel, special education service providers, and advocacy groups.

In addition, during the public comment period, videos were available on the department web site explaining the rule making process. Also posted were videos about the proposed rule changes (arranged by topic). The numbers of downloads of the videos, by topic, were as follows:

- a. *Evaluation, Eligibility, and IEP Development: 1,338 downloads*
- b. *Teacher Qualifications and Personnel: 784 downloads*
- c. *Rule Promulgation Process: 768 downloads*
- d. *ISD Plans for Special Education: 615 downloads*
- e. *Due Process: 356 downloads*

3. Proposed changes limit parent participation in the evaluation and IEP development process.

Response: Nothing in the proposed rules limits a parent's right to participate in the evaluation or IEP process. The right of a parent to participate in these processes is protected by the IDEA and is fully recognized in Michigan's special education rules.

4. Comments about the public hearing and public comment process:

- a. The public comment period was too short.
- b. There were only two public hearings.
- c. There was no access to a public hearing for individuals in northern Michigan and the Upper Peninsula.
- d. Methods for providing public comment should have included email and fax.

Response: The public comment and public hearing process exceeded the requirements of the Administrative Procedures Act. The public comment period lasted approximately one month. Public comments were accepted by mail, online, email, and in writing or by oral submission at one of the two public hearings. Comments were not accepted by fax due to the technological unreliability of that method of communication. A total of 1,622

individuals and organizations submitted comments and each comment was reviewed by the Office of Special Education. As required by the APA, notice of the public hearings was published in three newspapers, including one in the Upper Peninsula.

Note: A petition generated at www.change.org requesting that proposed rules be withdrawn was submitted at the Detroit public hearing. In this report, the department has not separately addressed that petition, which was not addressed to the department but to Governor Snyder.

Name of person completing this report:

Nancy Rotarius

Date report completed:

May 28, 2014

(ORR-JCAR March 2014)