

DEPARTMENT OF LABOR AND ECONOMIC GROWTH
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
DUE PROCESS PROCEDURES FOR SPECIAL EDUCATION HEARINGS

Filed with the Secretary of State on May 20, 2005.
These rules take effect on July 1, 2006.

(By authority conferred on the state office of administrative hearings and rules by sections 1701 and 1703 of 1976 PA 451, MCL 380.1701 and 380.1703, and Executive Order 2005-1, MCL 445.2021)

R 340.1881, R 340.1882, R 340.1883, R 340.1884, and R 340.1885 are added to the Michigan Administrative Code as follows:

R 340.1881 State due process hearing; effective date.

Rule 81. All requests for a due process or state level review filed or remanded for administrative hearing by a court of competent jurisdiction after July 1, 2006, shall be conducted under Rules 340.1881 to 340.1885.

R 340.1882 State due process hearing; procedures.

Rule 82. (1) Due process hearings under this rule shall be administered and provided by the state office of administrative hearings and rules.

(2) A parent, a public agency, or the department of education may initiate a hearing by filing a written request for hearing to the state office of administrative hearings and rules and providing a copy of the written request for hearing to the other parties.

(3) 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 Part C services to the child or the child's family.

(f) Assignment of financial obligations for Part C services 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.

(4) The district of residence or public school academy shall reimburse the special education hearings unit 75% of the costs related to providing the hearing.

(5) The hearing may be terminated upon written stipulation of the public agency and the parent. A copy of the stipulation to terminate shall be provided to the administrative law judge and to the state office of administrative hearings and rules.

(6) The state office of administrative hearings and rules shall notify the parties of their responsibilities to provide proof of implementation of any decision or order issued to resolve a due process hearing request initiated under this rule.

(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 60 days after the mailing date of the final decision.

April 5, 2005

R 340.1883 Hearing functions: administration.

Rule 83. (1) The hearing shall be conducted by an administrative law judge who is an attorney licensed to practice law in this state and who is employed by the state office of administrative hearings and rules as a classified employee subject to civil service requirements.

(2) The state office of administrative hearings and rules unit shall provide periodic training to administrative law judges, as needed, regarding the following:

- (a) Administrative law and procedures.
- (b) Special education law, rules, and regulations.
- (c) Needs of students with disabilities.
- (d) Diagnostic testing.
- (e) Educational testing.
- (f) School programming and operations.
- (g) Educational accommodations.
- (h) Presiding officer ethics, skills, authority, and duties.

(3) The state office of administrative hearings and rules unit shall do all of the following as a part of its responsibility to provide hearings under R 340.1881:

- (a) Inform the parties to a special education hearing of the availability of mediation.
- (b) Inform the parent of any free or low-cost legal and other relevant services available in the area.
- (c) Provide the parent with a copy of the procedural safeguards.
- (d) Make available to the public and to the parties in any special education hearing a statement of the participants' roles and responsibilities and a description of the hearing process.
- (e) Make available to the public a statement of the ethical rules governing the conduct of administrative law judges.
- (f) Develop and make available to the parties general statements of matters such as the burden of proof, legal standards or analyses, and the elements of proof necessary to support claims or defenses commonly raised in special education due process hearings.
- (g) Assign administrative law judges to individual cases.
- (h) Arrange for a location, transcription, and any other services required for a hearing.
- (i) Transmit decisions to special education advisory committee with personally identifiable information deleted.

R 340.1884 Administrative law judge; duties.

Rule 84. Administrative law judges employed by the state office of administrative hearings and rules shall do all of the following:

- (a) Manage, schedule, and control the hearing process and participants to resolve the dispute in a prompt, orderly, and fair manner.
- (b) Conduct a prehearing conference unless the administrative law judge determines that a prehearing is unnecessary. A prehearing conference may be conducted in person, telephonically, or by other means consistent with the parties' needs. The administrative law judge may require the participants in the prehearing conference to do any of the following:
 - (i) Identify and simplify the issues.
 - (ii) Consider the need for disposition of any motions before the hearing, admissions of fact and authenticity of documents to avoid unnecessary proofs, limit the number of witnesses, and identify the nature and extent of the relief demanded.
 - (iii) Inform the parties of the availability, if any, of statements of the legal standards, elements of proof, and burden of proof relevant to the claims and defenses asserted.
 - (iv) Identify known documentary evidence and admit its authenticity, if possible.
 - (v) Prepare a list of witnesses to be called at the hearing.
 - (vi) Determine a schedule for the completion of any prehearing matters including disclosure of witness names and exhibit exchange, time limits, meetings, evaluations and the hearing.

(vii) Make any disclosures of interest or relationships that may require a representative, a witness or the administrative law judge to withdraw, recuse, or be disqualified on ethical or conflict of interest grounds.

(viii) Discuss the possibility of settlement.

(ix) Consider all other matters that may aid the disposition of the disagreement.

(c) If a prehearing conference is held, prepare and provide to the parties a summary of the results of the prehearing conference within 5 days after the prehearing conference.

(d) Rule, as a part of the hearing record, on a party's request for disqualification of the administrative law judge. If the administrative law judge denies the request based on disputed factual assertions, then the administrative law judge shall immediately refer the disqualification matter to the chief administrative law judge within the state office of administrative hearings and rules, or, if the chief is unavailable, to another administrative law judge within the state office of administrative hearings and rules for review and determination.

(e) Provide written notice of the time and location of the hearing.

(f) Direct that the hearing be public or private at the option of the parents.

(g) Administer oaths or affirmations.

(h) Preside at the hearing and actively participate to ensure a fair, orderly, and full development of the evidence relevant to the claims and defenses asserted.

(j) Rule on objections to the conduct of the hearing and to the introduction of evidence and give effect to the rules of privilege.

(k) Render a legally sufficient written decision supported by competent evidence meeting the legally appropriate standard of proof, in a format acceptable to the state office of administrative hearings and rules, resolving the matters in dispute within the time period required by the applicable law, regulation, or interagency agreement.

(l) Conduct and consider peer editorial review of draft decisions as required by the state office of administrative hearings and rules.

(m) Complete all reports, records, statements, and correspondence related to completion of a hearing or otherwise required by the state office of administrative hearings and rules.

(n) Develop, present, and participate in training for administrative law judges, advocates, parents, administrators, and service providers as assigned by the state office of administrative hearings and rules.

(o) Research matters that the administrative law judge finds necessary to resolve issues presented in a hearing or that has been assigned by the state office of administrative hearings and rules.

(p) Review, hear, and reach a written determination on any motion for disqualification that is referred to the administrative law judge for review pursuant to subrule (d) of this rule.

R 340.1885 Administrative law judge; power and authority.

Rule 85. An administrative law judge is authorized to do any of the following:

(a) Sequester witnesses at any party's request.

(b) Sign and issue subpoenas compelling witness attendance and testimony or production of documentary or physical evidence on the administrative law judge's own initiative or at the request of a party.

(c) Determine the order of proofs.

(d) Accept stipulations of fact and base statements of fact on such stipulations.

(e) Order an evaluation at public expense of a person that is the subject of the hearing.

(f) Take official notice of judicially cognizable facts.

(g) Admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent people in the conduct of their affairs, and shall provide guidance regarding evidentiary questions.

(h) Exclude irrelevant, immaterial, or unduly repetitious evidence.

(i) Bar evidence or testimony, upon the request of the opposing party, that was not timely disclosed as required by applicable law or regulation or by the schedule determined at the prehearing conference.

(j) Question any sworn witness at the hearing before any party questions the witness, after the parties complete their initial examination of the witness or, to the extent necessary to clarify the administrative law judge's understanding of the witness' testimony, at any time during the hearing.

(k) Limit the number of lay or expert witnesses a party may call on an issue, as necessary, to avoid unnecessary or cumulative evidence.

(l) Require that conflicting experts address the issue or issues on the record.

(m) Visit and observe any relevant location, upon notice to the parties.

(n) Permit taking of evidence by deposition, by video conferencing, or by other similar mechanisms. All parties shall be given an opportunity to examine or cross examine the witness under oath.

(o) Except in hearings initiated pursuant to R 340.1882 (3)(g), (h), or (i), grant a party's request for a specific extension of the time limit for completion of a hearing. The administrative law judge shall require the parties to establish good cause for the extension. The administrative law judge may require submission of documentation to establish the need for the extension and may require a party's representative requesting an extension to establish their client's knowledge of the request. The administrative law judge may provide written notice directly to the parties of any extension requested and the grounds for the request, as well as of the administrative law judge's written determination to grant or deny a request for an extension. The administrative law judge may condition the grant of an extension of the time limit on any other just terms.

(p) Require the parties to file 1 or more additional copies of all documents filed with the state office of administrative hearings and rules and may direct that 1 additional copy be filed with all personal identifiers deleted.

(q) Unless the affected party consents, require a representative seeking to withdraw from representation, to show, after notice to the party and opportunity to respond, good cause for the withdrawal.

(r) Impose, at the request of a party or on the administrative law judge's own initiative, sanctions on any party, or representative of a party who:

(i) Fails to comply with these rules or any proper order or requirement specified by the administrative law judge.

(ii) Engages in ex parte communication.

(iii) Disrupts a hearing.

(s) Sanctions may include:

(i) Dismissal of an issue, claim, defense, or the hearing.

(ii) Order compensatory education

(iii) Any other sanction authorized by law.