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To whom it may concern,

The following tables constitute written comment on the proposed rules governing Special Education Programs and Services (2012-106 ED) from the Michigan Association of Administrators of Special Education (MAASE).

Thank you for the opportunity to provide comment.

For the Executive Board,

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MAASE Comment on October 12, 2012 Proposed Rules				
Proposed Rule Change	Support As Is	Support with Modifications	Do Not Support	Comments
Part 1. General Provisions				
R340.1701 – Assurance of compliance. Rule 1.	X			
R340.1701a – Definitions; A to D. Rule 1a.(c)(ii) and (v)	X			
R340.1702 – “Student with a disability” defined. Rule 2.			X	<p>► This proposed change conflicts with PA 451, which describes a “student with a disability” as being under age 26.</p> <p>► Lacks internal consistency - children under 3 are limited to having IFSPs, yet IEPs can be developed for some students under the age of 3.</p>
R340.1703 – “Infant or toddler with a disability” defined. Rule 3.			X	<p>► PA 451 describes “student with a disability” as being under age 26; this proposed rule has the effect of changing law and cannot be promulgated as such.</p>
R340.1701 – Assurance of compliance. Rule 1.	X			
R340.1701a – Definitions; A to D. Rule 1a.(c)(ii) and (v)	X			
R340.1702 – “Student with a disability” defined. Rule 2.			X	<p>► This proposed change conflicts with PA 451, which describes a “student with a disability” as being under age 26.</p> <p>► Lacks internal consistency - children under 3 are limited to having IFSPs, yet IEPs can be developed for some students under the age of 3.</p>
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Part 2. INITIAL EVALUATION, TIME LINES, INDIVIDUALIZED EDUCATION PROGRAM, DISTRICT RESPONSIBILITIES, AND DUE PROCESS PROCEDURES				
R 340.1721 – Request for initial evaluation. Rule 21.			X	► This proposed rule change is inconsistent with other proposed changes. A request for initial evaluation may be made for children under the age of 3.
R 340.1721a – Initial evaluation. Evaluations. Rule 21a. (1)			X	► This proposed change is unclear in how it would apply to reevaluations. ► This proposed rule change excludes students who are 22-26 years of age; need clarification on the impact for this age group. ► We recommend that the word “initial” be left in the definition.
R 340.1721b – Time lines. Rule 21b. (4)	X			
R 340.1721e – Individualized education program. Rule 21e. (1)(c) and (5)			X	► This proposed rule change should read “3 to 6.” ► There is no identified general education early childhood curriculum in Michigan. IDEA requires that age-appropriate activities be included in the PLAAFP, so the proposed language is unnecessary. ► Recommendation for a future rule package: remove short-term objectives as IDEA addresses this.
R 340.1722 – District responsibilities. Rule 22. (2)(a-b) and (3)	X			
R 340.1724f – District responsibilities. Rule 24f. (3)(c-d), (4)(e-f), (6), and (9)	X			
R 340.1725f – Surrogate parent. Rule 25f.	X			

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Part 3. ADMINISTRATION OF PROGRAMS AND SERVICES				
R 340.1732 – Designation of residency. Rule 32. (1-2)			X	<p>► It is unclear how this proposed rule change addresses the obligation and responsibility of FAPE for either the resident district or a statewide cyber-charter school district.</p> <p>► There is no clarity when looking at the interplay between Section 51a(14) of the School State Aid Act, PA 451, the IDEA, and the MARSE.</p> <p>► Any rule changes for 1732 need more study.</p> <p>► Consider adding the following language: “When a student enrolls in a cyber or charter school, the cyber or charter school becomes the student’s resident district.”</p>
R 340.1734 – Deviations from rules. Rule 34. (1), (3), (5), (7), and (8)	X			
R 340.1738 – Severe cognitive impairment program. Rule 38. (b-g)			X	<p><i>MAASE members have two suggestions for this rule that are quite different and decided to provide both in comment.</i></p> <p>#1</p> <p>► The proposed change to “10 consecutive school days” is not any clearer than the existing language of “two weeks.”</p> <p>► The term “school days” is generally understood to be days that the larger school population is in session. Based on this common understanding, we exclude days in late June, July and August when counting 30 school days. The use of the term “school days” here to refer to the summer months is confusing, because the general population is not in session.</p> <p>► Recommend using the language “17 consecutive calendar days” to refer to the longest possible break in instruction. This would incorporate the original concept of two weeks, but would also address the reality of a holiday that may fall on a Friday or Monday (as Labor Day always does.)</p> <p>► Support striking the language regarding the “first 5 days when pupil instruction is not provided” with the understanding that it is duplicative of the school code and does create any greater burden for districts.</p>

				<p>#2</p> <p>► Recommend eliminating 1738 (b)(i)(ii) to be consistent with other rules; it is one of only two eligibility categories that mandate days and hours; allow ISD's to include in ISD Plan.</p>
<p>R 340.1748 – Severe multiple impairments program. Rule 48. (2-4)</p>			X	<p><i>MAASE members have two suggestions for this rule that are quite different and decided to provide both in comment.</i></p> <p>#1</p> <p>► We do not believe that “10 consecutive school days” is any clearer than the existing language of “two weeks.”</p> <p>► The term “school days” is generally understood to be days that the larger school population is in session. Based on this common understanding, we exclude days in late June, July and August when count 30 school days. The use of the term “school days” here to refer to the summer months is confusing, because the general population is not in session.</p> <p>► We recommend using the language “17 consecutive calendar days” to refer to the longest possible break in instruction. This would incorporate the original concept of two weeks, but would also address the reality of a holiday that may fall on a Friday or Monday (as Labor Day always does.)</p> <p>► We support striking the language regarding the “first 5 days when pupil instruction is not provided” with the understanding that it is duplicative of the school code and does create any greater burden for districts.</p> <p>#2</p> <p>► Recommend eliminating 1748 2(a)(b) to be consistent with other rules; it is one of only two eligibility categories that mandate days and hours; allow ISD's to include in ISD Plan.</p>
<p>R 340.1749a – Elementary level resource program. Rule 49a. (1)</p>		X		<p>► We understand that this change is being proposed because the term “shall” relates to the teacher. However, when the rule was originally promulgated, it was optional for districts to provide resource programs, and the word “may” was used to convey the optional nature of the program.</p> <p>► We recommend that the rule be re-written as follows: A district may provide a special education elementary level resource program. Such a program shall be provided by a special education teacher.</p>
<p>R 340.1749b – Secondary level resource program. Rule 49b. (1)</p>		X		<p>► We understand that this change is being proposed because the term “shall” relates to the teacher. However, when the rule was originally promulgated, it was optional for districts to provide resource programs, and the word “may” was used to convey the</p>

				<p>optional nature of the program.</p> <p>► We recommend that the rule be re-written as follows: A district may provide a special education secondary level resource program. Such a program shall be provided by a special education teacher.</p>
<p>R 340.1754 – Early childhood special education programs; 2 years 6 months to 5 years of age Rule 54. (1-2)</p>			X	<p>► The age range language should be “2 years 6 months to 6 years of age.”</p> <p>► “2 years, 6 months” is confusing when proposed rule 340.1703 states “an individual less than 3 years of age who needs....”</p> <p>► Rules should use the same age parameters and be consistent throughout the document.</p> <p>► Regarding requiring a “research-based early childhood comprehensive curriculum”:</p> <ul style="list-style-type: none"> <input type="checkbox"/> A review of the literature indicates a lack of research in this area, and there are few/no research-based curricula for districts to adopt. <input type="checkbox"/> We recommend deletion of the words “research-based.” <input type="checkbox"/> We support alignment to the state-approved early childhood standards (as opposed to the “general early childhood curriculum” which is referenced at 1721e.)
<p>R 340.1755 – Early childhood special education services; 2 years 6 months to 5 years of age Rule 55. (1-3)</p>			X	<p>► The age range language should be “2 years 6 months to 6 years of age.”</p> <p>► The proposed rule is unclear on a) what constitutes a program or service and b) the difference between a program and a service in regards to “teacher consultation.”</p> <p>► It is unclear whether the 72 clock hours reference programs and services or solely services.</p> <p>► The term “one academic year” is undefined in MARSE and needs clarification.</p> <p>► Regarding 1755(3):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Does “placed in a non-special education program” mean placement by an IEP Team, or might it also be interpreted to mean unilateral placement by a parent? <input type="checkbox"/> We are not sure that considering the need for consultation is appropriate if the placement is made unilaterally by the parent. <input type="checkbox"/> This seems to go beyond the requirements of IDEA to create a new mandate for school districts. <p>► “Children students” may be a typo.</p>
<p>R340.1758 – Programs for students with autism spectrum disorder. Rule 58. (b)</p>	X			

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Part 5. QUALIFICATIONS OF TEACHERS AND OTHER PERSONNEL				
R 340.1781 – Teachers of students with disabilities; endorsement requirements. Rule 81. (1)	X			
R 340.1790 – Teacher consultants for students with disabilities. Rule 90. (1)	X			
R 340.1796 – Teachers of students with speech and language impairment; special requirements. Rule 96. (2)	X			
R 340.1798 – Teachers of students requiring adapted physical education; role. Rule 98. (c)	X			
R 340.1799c – Teachers of students with hearing impairment; special requirements. Rule 99c (4)	X			
R 340.1799g – Transition coordinator; requirements. Rule 99g (1)(c) and (2)	X			

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Part 6. FINANCING				
R 340.1802 – Use of funds. Rule 102. (d)	X			
R 340.1809 – State aid to operating school districts. Rule 109.	X			
R 340.1811 – Distribution of intermediate millage to the intermediate school district, its constituent local school districts, and public school academies. Rule 111. (1)	X			

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Part 7. DEVELOPMENT AND SUBMISSION OF INTERMEDIATE SCHOOL DISTRICT PLANS AND MONITORING				
R340.1831 – Plan and modification submission. Rule 131. (4)	X			
R340.1832 – Content areas. Rule 132. (e)			X	<p>► We understand that the Department is of the opinion that 1832e is unnecessary because the same flexibility is already permitted under 1832d. However, the flexibility that is currently allowed under 1832e was never present when we operated only under 1832d. To say now that 1832d already provides the necessary flexibility defies the historical reality; if indeed 1832d “always” provided the flexibility, then 1832e would never have been promulgated.</p> <p>► We believe that 1832d does not provide transparent, affirmative permission for districts to provide programming other than what is described in Part 3, and elimination of 1832e’s affirmative language would leave districts and the Department open to complaints and other legal action. We need to retain affirmative language so that the Department interpretation does not change when current staff is no longer in place.</p> <p>► Practices under 1832e have led to significant cost savings for local districts and ISDs during particularly dire financial times. To eliminate 1832e now would result in significant financial impact at a time when districts are least able to absorb the hit. For example, a preliminary study reveals that costs to individual local districts in Oakland County could easily exceed \$1 million per district if the flexibility under 1832e is lost entirely.</p> <p>► We understand concerns that have been voiced about lack of transparency under 1832e, as well as concerns that 1832e essentially permits waivers to Part 3 program rules without time limits. We believe the important concepts to retain from 1832e are explicit permission for alternative programming and as well as county-wide waiver approvals, particularly as related to ratios (class/caseload sizes.)</p> <p>► We recommend that 1832e be retained as written in order to affirm the ability of districts to follow Part 3 program rules OR to inform the state about what other programming will be provided to meet the needs of students.</p> <p>► We believe that waiver-like language should not be approvable under 1832e. Instead, waivers should be approvable on a county-wide or ISD basis rather than requiring individual district approvals.</p> <p>► Alternately, we might support a 3-year cycle for ISD plans that incorporate waiver-like provisions, but this is a less-preferred solution</p>

				since it opens the entire plan to scrutiny and/or debate on a regular basis, thereby creating unnecessary work at both the ISD and state level.
R340.1839 – Monitoring and program evaluation. Rule 139. (1)	X			
Part 8. STATE COMPLAINTS				
R340.1851 – Filing a state complaint Rule 151. (1)	X			
Part 10. BIRTH TO THREE				
R340.1862 – Individualized family service plan; time lines; eligibility. Rule 162. (1-5)			X	<p>► By embedding the Early On Michigan/Part C individuals with disabilities education act state plan in rule, any changes in the state plan will impact the law. Plans may be edited which could have significant impact on the implementation of this rule.</p> <p>► (4) – Having one time line of 45 days simplifies the implementation; however, this will present problems for districts during the summer months.</p> <p>► (4)(c) – Clarify 1 year—is this a school or calendar year?</p> <p>► (5) – Add language that special education programs and/or services may also be specified for infant and toddler with disabilities in an IEP since in several other places of these proposed regulations, IEPs may be conducted for children less than age 3.</p>