

TO: MCEA Superintendents
MCEA Special Education Task Force Members

FROM: Ray Telman, Executive Director

DATE: 4-4-01

RE: Proposed Special Education Rules

MCEA appreciates the time and effort the Michigan Department of Education (MDE) and in particular, its Office of Special Education and Early Intervention Services has spent on the revision of Michigan's Special Education Administrative Rules.

On Wednesday 3/28/01 the Middle Cities Education Association (MCEA) Task Force reviewed these proposed changes.

Following, please find nine recommendations relative to these proposed rules. Each recommendation is preceded by a statement of the applicable issue and related concerns.

In addition it should be noted that MCEA has identified a number of other issues which it anticipates will be addressed by other groups and individuals. These others include attorneys who met with the MCEA Special Education Task Force on March 28. Issues MCEA anticipates will be addressed directly by these individuals with the MDE include the need to:

- Provide in excess of 5 days to select a hearing officer for an expedited hearing
- Clarify the proposed residency rule (R32)
- Define the special education state plan
- Identify the proposed "parties" to the IEPC who must be provided notice
- Provide school districts a right to appeal after the current seven day limit
- Provide school districts the right to appeal a complaint

If there are any questions or comments regarding these recommendations please contact Ray Telman at MCEA – Ph. 517-347-0292, Fax 517-347-0383, or Email: rtelman@middlecities.org

CASELOAD CAPS

Issue

Proposed Rule 340.1832 (1)(E) recommends a maximum ISD wide student/teacher caseload cap based on an average of current select special education programs and services.

Concerns

- There is no research which addresses the propriety of caseload caps.
- Averaging the current student/teacher caseloads will lower the caseload cap in the more numerous high caseload programs which will not be offset by the higher caseloads in the less numerous low caseload programs. As a result personnel costs will significantly increase.
- ISDs which have already received caseload waivers will have a different caseload cap than those ISDs which have not received caseload waivers.
- There will be inequities between maximum caseload caps (with consequent fiscal impact) between ISDs.
- Maximum ISD student/teacher caseload caps do not correspond to special education requirements such as “free appropriate public education”
- The elimination of program caseloads (and other program rules) based on inequitable ISD wide student/teacher ratios invites parent/district differences and increased special education hearings.
- The mechanics and implementation of ISD wide caseload caps are confusing and problematic (e.g. which district within an ISD adds a teacher if the ISD cap is exceeded, etc.)

Recommendations

- Delay the implementation of proposed Rule 340.1832(1)(E) – and other proposed rules related to its implementation (e.g. elimination of program rules in Part III).
- Complete a comprehensive research based study of caseloads and special education program service delivery.
- Implement proposed changes based on the findings of the above noted study.

Rationale

A research-based study will provide an opportunity to address the above noted concerns.

In addition it should be noted that the Special Education Task Force recommendations, upon which the proposed rules changes have relied, specifically proposed a research-based study of caseloads and special education programs and services. Excerpts from the Task Force report include the following:

“Adequate information is not available to recommend changes in current caseloads or to develop new caseloads or service ratios for support staff. Therefore, it is the recommendation of the Task Force that the MDE undertake a comprehensive study that would result in the development of caseloads, ratios, and service delivery guidelines for support services which are based on sound research and best practices. In addition, the MDE must be prepared to implement the service delivery model presented in these recommendations. The Task Force wishes to emphasize the importance of sound research in this process.”

“Recommendation 5.0 – Caseloads...

5.2 The MDE will immediately initiate a comprehensive study which would result in the development of caseload maximums for the roles of the special education teacher instructional support, and consultant which are based on sound research and best practices.”

“Current caseload maximums are not research-based and reflect little other than opinion regarding the subject. Such an important issue should be thoroughly researched and based on best practices in the profession today. Without the additional information, suggestions for caseload changes would be nothing more than additional conjecture.”

SOCIAL MALADJUSTMENT

Issue

Proposed Rule 340.1706 adds students who are “socially maladjusted” (by eliminating the current exemption) to the eligibility criteria of “emotional impairment”.

Concerns

- The elimination of the “socially maladjusted” student exemption will require the provision of special education programs and services to a student population which heretofore has not been considered educationally impaired.
- The proposed change will significantly increase special education programs service costs

Recommendation

Continue the exemption of social maladjustment from the criteria for the “emotional impairment” eligibility.

PREPRIMARY IMPAIRED

Issues

- Proposed Rule 340.1711 changes the eligibility criteria for “preprimary impaired”
 - From 5 years of age to 7 years of age and
 - By reducing the required developmental delay from $\frac{1}{2}$ to $\frac{1}{4}$ of the expected development
- Proposed Rule 340.1754 reduces the preprimary classroom program caseload from 24 students to 12 students and provides for placement in non special education programs such as daycare.

Concerns

- Young children develop at significantly different rates. Reducing the developmental delay from $\frac{1}{2}$ to $\frac{1}{4}$ of the expected development will likely inappropriately identify children (e.g. at risk children) as special education preprimary impaired.
- The proposed placement of students in non special education programs should include appropriate placement standards, criteria or guidance (e.g. non-special education program class size).
- The expansion of the age range and the reduction of caseload for preprimary impaired will significantly increase costs

Recommendation

Please see the “recommendations” and “rationale” for “CASELOAD CAPS”

AUTISM

Issue

Proposed Rule 340.1715 changes the definition of autism eligibility.

Concern

This proposed definition does not reflect current research or diagnostic criteria being used by the medical and mental health professions.

Recommendation

Adopt the eligibility definition of autism proposed by the Michigan Association of Intermediate Special Education Administrators and submitted to the MDE office of Special Education on April 26, 2000.

ELIGIBILITY REQUIREMENTS

Issue

Throughout the proposed rules the impairment identification (eligibility) rules have eliminated the consideration that “a determination of impairment shall not be based solely on behaviors relating to environmental, cultural and economic differences.”

Concerns

- Ethical and professional standards dictate that a comprehensive evaluation which identifies a student as special education eligible must thoroughly consider the impact of environmental, cultural and economic differences.
- In the absence of the above noted considerations a propensity to over identify poor and minority student exists.

Recommendation

Do not eliminate the existing eligibility consideration relative to environmental, cultural or economic differences.

PLACEMENT

Issue

Proposed Rule 340.1721e(2) requires consideration of student placement with a teacher who is endorsed in a particular disability category.

Concern

The proposed rules create new impairment areas (i.e. "Other Health Impairment"-R9A, "Traumatic Brain Injury"-R16 and "Deaf-Blindness"-R17). There are no teacher endorsements which correspond to these new impairment areas.

Recommendation

Eliminate proposed Rule 340.1721e(2)

Rationale

The elimination of this proposed rule limits confusion and potential conflict but does not prevent consideration of placement with a teacher who is best endorsed and trained to address the student's needs.

PARENTAL RIGHTS

Issue

Proposed Rule 340.1701(9) eliminates the definition of “parent”.

Concern

The current definition of parent provides that when a student reaches 18 years of age, (if a legal guardian has not been appointed) the student is considered the parent for the purposes of special education procedures. In the absence of federal guidance, the transfer of parent rights are unclear.

Recommendation

Provide direction as to the transfer of parental rights to special education students.

CONSENT

Issue

Proposed R340.1721 does not prohibit a district from pursuing an administrative special education due process hearing to override a parent's decision not to evaluate a student for special education services.

Concerns

- Administrative special education due process hearings create a counterproductive, adversarial relationship with the parent of the student for whom the provision of special education program and services are sought.
- Administrative special education due process hearings are often expensive and time consuming.
- Federal law allows states the option to prevent districts from overriding a parents refusal to consent to evaluate (as is the case in Michigan for Part C of IDEA).
- In the absence of pursuing a hearing the statute of limitation does not expire on a claim against the district until after the student reaches 18 years of age.

Recommendation

Specifically prohibit school districts from pursuing an override when parents do not provide consent to evaluate.

PSAs

Issues

- Proposed Rule 340.1811 requires that the plan to distribute special education intermediate district millage (Act 18) must be submitted to the Public School Academies (PSAs) within the intermediate district for approval.
- Proposed Rule 340.1838 requires the Parent Advisory Committee (PAC) for each intermediate district to include a parent from each PSA within the ISD and provides PSA boards ability to nominate additional members to the PAC (not to exceed 33 1/3% of the total PAC membership).

Concerns

- While representing only a small percentage of an intermediate district's student population (and possibly an even smaller percentage of the special education student population), the actual number of PSAs can far exceed the number of local districts within an intermediate district.
- The proposed rules would more than quadruple the number of members in at least one intermediate district PAC and substantially increase others.

Recommendation

Limit the participation of PSAs in PACs and intermediate district millage distribution approval to a proportionate representation of the district's student population.