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# MARSE CHANGES 2014

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ISSUES FROM THE COMMUNITY OF 10,000  
PETITIONERS TO STOP THE MARSE CHANGES  
IN MICHIGAN

Prepared by members of the Working Group, 10,000 Petitioners to Stop the MARSE Changes.  
Issue, impact and relevant law citations.

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**WORKING GROUP,**

**10,000 PETITIONERS TO STOP THE  
MARSE CHANGES IN MICHIGAN**

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**Sidney Kraizman**, Attorney & father of an adult daughter born with a severe hearing impairment

**Carla B. Marymee**, Parent of a 19-year-old young man who has ASD and is now attending Oakland University; advocate and owner of Kids First Advocacy

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**FINDINGS.—CONGRESS FINDS THE FOLLOWING:**

“(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

“(2) Before the date of enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94–142), the educational needs of millions of children with disabilities were not being fully met because—

“(A) the children did not receive appropriate educational services;

“(B) the children were excluded entirely from the public school system and from being educated with their peers;

“(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

“(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

“(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this title has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

“(4) However, the implementation of this title has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

“(5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—

“(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to—

“(i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and

“(ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

“(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

“(C) coordinating this title with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 1965, in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where such children are sent;

“(D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;

“(E) supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;

“(F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children;

“(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and

“(H) supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities.

## R 340.1702 "STUDENT WITH A DISABILITY" DEFINED; DETERMINATION OF ELIGIBILITY

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### TEXT CHANGES PROSED TO MARSE

- (4) A student with a disability shall ~~who is~~ not have either of the following:
- (a) Attained the age of more than ~~25~~ 26 years of age as of September 1 of the school year of enrollment, ~~and who has not graduated from~~
  - (b) Completed the requirements for a regular high school diploma.**

### INTENT / RESPONSE FROM OSE

- 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.

### ISSUES

***"Completed the requirements" means that a student would be ineligible for Special Education once they have acquired enough credits to graduate with a diploma, regardless of whether they remain enrolled in classes to fulfill their IEP goals and/or transition plan. (High performing ASD students are a prime example.)***

### IMPACT

***This will have a detrimental impact on students who perform well academically, but still need additional transition services to develop vocational, social, emotional and adult living skills.***

### KEY POINTS

- By Statute, Michigan Special Education goes to age 26. **MCL 380.1711** This specific intent of the legislature is now being countermanded by rule change for specific student groups.
- Completion of credits does not equal the fulfillment of IEP goals and transition plans, which makes ending the IEP, services and special education out of alignment with the intent of the Michigan Statute.
- Deferred Diploma (student can have credits complete but still work on transition plan or IEP goals) is now damaged as an option for students.
- Federal IDEA (Individuals with Disabilities Education Act) Law requires high school completion AND preparation for students post-secondary education and independent living. This change attempts to circumvent this Federal Law.
- **IDEA 1400 ( d).(1) (A)** *To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. (B) To ensure that the rights of children with disabilities and parents of such children, are protected.*

## TEXT CHANGES PROPOSED TO MARSE (Example re MET)

(4) ~~When evaluating “An” evaluation of a student suspected of having an emotional impairment, the multidisciplinary evaluation team report shall include documentation of all of the following:~~

### INTENT FROM OSE

- Removes language regarding the determination of the impairment by the MET to focus on who will complete the assessments.

### ISSUES

**The term "Multidisciplinary Evaluation Team" is necessary to maintain a reasonable evaluation for various disabilities and most importantly a re-evaluation that is in line with IDEA regulations. The MET group was left intact for initial evaluations, but is needed for proper re-evaluations, which are not simply determinations of continued eligibility as the OSE is contending.**

### IMPACT

**Removal of the MET for re-evaluations, and the diminution of the MET composition for initial and re-evaluations would preclude input/evaluations from the parent and various professionals necessary to conduct a comprehensive multi-disciplinary evaluation of all areas of suspected disability(ies), review / assess the educational impact of the suspected disabilities, and link the students disability's with appropriate academic programs and related services.**

### KEY POINTS

- The purpose and function of a **re-evaluation** are being misunderstood by the OSE
- IDEA is clear that purpose of BOTH evaluations is not only eligibility but also **the proper development of the educational plan for the child. Their changes do not reflect this legal duality.**

*IDEA regulation 34 CFR section 300.305, Evaluation & Re-evaluations Procedures (a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any **reevaluation** under this part, the IEP Team and other qualified professionals, as appropriate, must-- On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--(i)(A) Whether the child is a child with a disability, as defined in Sec. 300.8, **and the educational needs of the child;** or*

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

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

- Based on cited & governing Federal Law, the removal of the MET for re-evaluations is inappropriate.

## R 340.1710 "SPEECH AND LANGUAGE IMPAIRMENT" DEFINED;

### TEXT CHANGES

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

### INTENT / RESPONSE FROM OSE

*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.*

### ISSUE

**The argument from OSE that there is a Federal provision allowing full development of services without respect to classification, but based on a full assessment, is true. However, the implementation requires a comprehensive evaluation, which the OSE has already made problematic by the removal of the MET for evaluations and re-evaluations.**

**Moreover, striking this clause, without further direct and explicit guidance, will likely be interpreted by many ISD's that the exact opposite of what the OSE is claiming (and the opposite meaning of the phrase struck) is true. Why strike a true phrase without replacement elsewhere unless the intent is to create the appearance that the phrase was wrong or untrue?**

### IMPACT

**This deletion will result in denying speech and language services to students who require such services, but whose eligibility is other than Speech and Language Disorder. Denials already occur in today's population within schools in Michigan. Ex: A Michigan Special Ed director told an Advocate Lawyer recently that a student was not entitled to speech and language services because they were "not classified in the right disability". The resolution was made and services provided when the language being struck by the OSE here was cited. This was a Special Ed Director – training on basic law should not be necessary to ensure basic services nor is it a reasonable remedy as the OSE continually proposes since reaching that 'retraining' requires a lengthy, expensive formal complaint.**

### KEY POINTS

- Current students have documented instances of being denied speech and language services when they have other than a Speech and Language disability but demonstrated need.
- The reasoning of the OSE is such that keeping the statement would not lessen the clarity or impact of the rule, as they admit.
- Removing the rule, contrarily, has the effect of removing services from qualified students who need them, due to ignorance or (sic) "lack of training".
- OSE is correct as to the meaning of this [IDEA 2004 regulation, 34 CFR section 300.8](#) that defines "Child with a disability". This regulation states: [300.8\(a\)\(1\)](#) "A child with a disability means a child...." with one of the 12 listed disabilities, ..."hearing impairment (including deafness)" .. for example, "and who by reason thereof, needs special education and related services." By implication of this phrase the OSE is correct in their statement, but, **that federal regulation does not clearly and explicitly say that.** This is why the proposed rule should not be changed.

## R 340.1717 DEAF-BLINDNESS DEFINED; DETERMINATION

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### TEXT CHANGES

- (a) Medical specialists **including** ~~such as any~~ **at least 1** of the following:
- (i) An ophthalmologist.
  - (ii) An optometrist.
  - (iii) An audiologist.
  - (iv) An otolaryngologist.
  - (v) An otologist.
  - (vi) A ~~family physician or any other approved physician's~~, **assistant licensed under article 15 as defined in of 1978 PA 368, MCL 333.1101 et seq. 16101 to 333.18838.**

### INTENT FROM OSE - Unknown. Responses to changes requested:

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.*

### ISSUE

**Such assessment should include an evaluation conducted by the following deaf-blind medical specialists: 1) an audiologist; 2) an otolaryngologist or otologist; and 3) an ophthalmologist or optometrist.**

### IMPACT

**Under the revision of subparagraph vi, this proposal would allow for any physician or physician's assistant to unilaterally assess/determine whether or not a student has a hearing or visual impairment. This is rightly the domain of a specialist.**

### KEY POINTS

- Under the current Michigan Special Education Rule a determination of whether a child is deaf or hard of hearing “shall be based upon a full and individual evaluation by a multi-disciplinary evaluation team, which shall include an “audiologist and an otolaryngologist or otologist.” **R 340.1707.**
- Under the current rule a determination of whether a child has a visual impairment, partial sight or blindness, shall “be based upon a full and individual evaluation by a multidisciplinary team, which shall include an ophthalmologist or optometrist.” **R340.1708(2)**
- Logically, for a child with deaf-blindness one would expect that the assessment would be by: 1) an audiologist; 2) an otolaryngologist or otologist; and 3) an ophthalmologist or optometrist.
- **Solution - Amend the Rule 340.1717 Deaf-Blindness to require that when a child is evaluated for deaf-blindness at least 3 medical specialists would assess the child 1) an audiologist; 2) an otolaryngologist or otologist; and 3) an ophthalmologist or optometrist.**

## R 340.1721B TIME LINES.

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### TEXT CHANGES

(2) The parent has 10 school days after receipt of the notice of an initial offer of a free appropriate public education to provide the public agency with written parental consent to provide initial special education programs and services. **Within 30 school days of receipt of parental consent for evaluation, the public agency shall complete an evaluation, determine eligibility, and request parental consent for the initial provision of services.**

(3) Within ~~7-10~~ school days from the **receipt of parental consent for the initial provision of services, the public agency shall develop an individualized education program or service plan and date of the individualized education program team meeting,** the public agency shall provide the parent with the notice of an offer of a free appropriate public education **consistent with 34 CFR § 300.503** or determination of ineligibility. The public agency shall document mode and date of delivery **of notice**. ~~The notice shall identify where the programs and services are to be provided and when the individualized education program begins.~~

### OSE POSITION

...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.

### ISSUE

**The interpretation of the OSE here is incorrect. The consent of the parents to an evaluation is not the same as consent for services to be provided, nor is that supported by provision in IDEA as claimed. In the time line shown by the language proposed, there is one consent for evaluation and the IEP - whatever that may be, since it has not been developed at the time of consent. The parent is not provided opportunity to agree or disagree to the proposed IEP. One cannot provide informed consent without information. The OSE has the correct sequence reflected in their comments, but not their rules.**

### IMPACT

**Parents will have to consent prior to the development of the IEP that provides for programs and services. This is a violation of the parents and students rights and precludes informed consent.**

### KEY POINTS

- **34 CFR Section 300.9** Consent and **300.300 (a)** Parental Consent for Initial Evaluation and (b) Parental Consent for Services are the applicable Federal Law.
- Consent for initial evaluation and consent for services are treated by Federal Law as separate consents, not single as claimed by OSE.
- This change will result in costly formal complaint of violation of due process.
- Due Process claims costs for attorneys are handled by districts using insurance policies. Parents must bear legal costs on their own upfront. This is an inherently unequal remedy for parents; however, the law is clearly not with the OSE here.

## R 340.1721E INDIVIDUALIZED EDUCATION PROGRAM.

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### TEXT CHANGES

Rule 21e. (1) An individualized education program shall be developed ~~in accordance with~~ **pursuant to** 34 CFR part 300 and shall include all of the following in writing:

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

(2)(a) **The individualized education program team shall** ~~D~~determine if a student's current annual goals address 1 or more skills that need extended school year services. For any identified annual goal, the individualized education program team shall consider all of the following:

### OSE POSITION

Removing short term objectives brings Michigan in line with IDEA

### ISSUE

**Removing Short Term Objectives removes accountability of teachers and schools for delivering services and measurable progress put forth in the IEP for all students who do not take alternate assessments aligned to alternate achievement standards. Current performance metrics for Special Education students in Michigan indicate poor results against MDEA/OSE established targets and short term objectives are the only reasonable measurable accountability standards parents have to measure progress.**

### IMPACT

***As the Michigan Protection & Advocacy Service states in their comments to MDE rulemaking 3-14 "Without short-term objectives, the only remaining measure of educational benefit is an annual one. If a school fails to offer services reasonably calculated to provide educational benefit, the measure of educational benefit will only occur once a year, placing the IEP in question outside the complaint timeline and rendering the complaint process unavailable to address the issue."***

### KEY ISSUES

- Short Term Objectives measure a student's rate of improvement. How can an IEP be amended if there is no management of short term objectives?
- Teachers use Short Term Objectives for planning students lesson and accommodations
- Without Short Term Objectives, parents are unable to monitor students' progress until the end of the year, when no remedy is possible under these rules.
- The MDOE, OSE is diminishing the standards of Special Education in Michigan and making a rule that will effectively remove parents ability to make any complaint.
- Alternate Achievement Assessment (therefore mandated STO's under IDEA) determinations are not made until 3<sup>rd</sup> grade. The critical window for the earliest intervention, where methodology for basic learning (reading, writing, speaking) are most effective for life long impact, will be delivered without any short term objectives. This removes the ability of the parents to ensure their child is making measurable progress on key life skills during this critical phase.
- The parents' ability to utilize outside help is impacted as they cannot see deficits against progress other than on an end of school year basis. (Ex: speech and language pathologists etc.)
- HR 1352, findings by Congress state programs should "(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;" This certainly does not strengthen parents ability to participate, but weakens them instead.

## TEXT CHANGES

~~(3) Any participant in the individualized education program team's deliberations who disagrees, in whole or in part, with the team's determination may indicate the reasons on the team's individualized education program report or may submit a written statement to be attached to the report~~

## OSE POSITION

*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. (emphasis added)***

## ISSUE

**The Federal regulations are silent on the point of attaching a parent’s or team member’s dissent to an IEP. The position of the MDOE, OSE is that the notice form should be the correct location for recording dissent. The Michigan ‘Notice Form’ in use is not physically suited to record dissent nor does the language make it at all clear to parents that this is the appropriate place for their dissent to be recorded.**

## IMPACT

**Deletion of the option to document dissent with the IEP removes all opportunity for an IEP team member, most especially parents, to indicate concern or dissatisfaction with the IEP, placement and/or District's offer of FAPE. The only option for remediation is for the parent to file a formal complaint. It also precludes the parent from maintaining an official record of ongoing issues/concerns/ dissatisfaction for the purpose of validating a complaint in the future or for the purpose of asking for a new IEP meeting. The Notice Form is not physically suited for the purpose proposed.**

## KEY POINTS

- The form for recording dissent under this rule has no space titled ‘dissent’
- The physical size of the form and its location precludes the use for dissent (example attached)
- The form proposed does not conform with the Federal notice form requirements (see attached example)
- When proceeding move to a legal complaint, the lack of recorded dissent is a serious problem for parents and students.
- The proposed use of the form is ridiculous enough to be seen as disingenuous based on the size and location of the form
- The removal of current dissent inclusion gives the appearance of removal of accountability of schools and educators for providing a FAPE.

## Notice for Initial Provision of Services and Programs

The *Individuals with Disabilities Education Act (IDEA)* mandates that the district provide written notice to the parent when the district proposes to initiate or change the educational placement of the student or the provision of a Free Appropriate Public Education (FAPE) to the student; or when they refuse to initiate or change the educational placement of the student or the provision of a FAPE to the student.

You are receiving this notice for: \_\_\_\_\_  
(student name)

You are receiving this notice because we are proposing to implement your student's initial Individualized Education Program (IEP) with the IEP team meeting date of \_\_\_\_\_. **Parent consent is required for the initial provision of programs and services within 10 calendar days (see shaded box below to provide consent).** Pending receipt of parent consent, the programs and services will begin on \_\_\_\_\_ and will be located at \_\_\_\_\_.

Upon district signature (see bold box below), this notice and the student's IEP constitute the district's offer of a FAPE.

You are receiving this notice because your student was found ineligible for special education programs and services at the Individualized Education Program (IEP) team meeting, dated \_\_\_\_\_.

The IEP describes each evaluation procedure, assessment, record, or report used in this offer of a FAPE. In the course of the development of the IEP, other options (e.g., programs and services, supplementary aids and services) considered but not selected were:

Option Considered but Not Selected	Reason Not Selected

No other options were considered.

Other factors that are relevant to the district's proposal or refusal (describe): \_\_\_\_\_

There are no other factors that are relevant to the district's proposal or refusal.

If the IEP team has determined that programs and services will be provided in a district other than the student's district of residence:

- The resident district authorizes the operating district \_\_\_\_\_ to conduct subsequent IEP team meetings.
- The resident district will conduct subsequent IEP team meetings.

The Procedural Safeguards Notice you received when the district requested your consent for the initial evaluation describes protections under the IDEA. The Procedural Safeguards Notice is also available at [www.michigan.gov/documents/mde/May09-ProceduralSafeguardsNotice\\_278611\\_7.pdf](http://www.michigan.gov/documents/mde/May09-ProceduralSafeguardsNotice_278611_7.pdf).

The following sources are available to assist you in understanding your rights:

\_\_\_\_\_

**X** \_\_\_\_\_  
 Signature of Superintendent or Designee Date

**PARENT CONSENT**

I give consent for the initial provision of special education programs and services.

I refuse consent for the initial provision of special education programs and services.

**X** \_\_\_\_\_  
 Signature of Parent Date

### TEXT CHANGES

g) All paraprofessional personnel have a high school diploma.

### OSE POSITION

*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.*

The rule change will supersede current ISD plans and establish the requirement for all districts.

### ISSUE

The proposed change does not meet the IDEA demand for training.

### KEY POINTS

- IDEA 2004 regulation at 34 CFR section 300.156(b) (iii) provides: "(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that –  
*"(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities."*
- The MDE has not fulfilled its obligation in either the current rule or the proposed rule. Perhaps additional clarification is necessary.
- The Office of Special Education Services said in the Discussion of the final IDEA 2004 rules in the Federal Register Vol. 71 August 14, 2006, page 46611: "*Discussion: We believe the provisions in section 300.156, consistent with section 612(a) (14) of the Act, are sufficient to ensure that paraprofessionals meet high standards and that including additional requirements in these regulations is unnecessary. These provisions require an SEA to establish and maintain qualifications to ensure that personnel, including paraprofessionals, are appropriately and adequately prepared and trained, and have the content knowledge and skills to serve children with disabilities;*" SEA is the State educational agency and is defined at 34 CFR section 300.41 as the State board of education or state agency, here the Michigan Department of Education.
- The solution is to require in these special education rules that the intermediate school districts' plans require that "All paraprofessional personnel have a high school diploma and are appropriately trained to assist in the provision of special education and related services to students with disabilities." The training of paraprofessionals would be by the local school districts or the ISDs and depend on the nature of the student's disability that the paraprofessional is working with, for example whether hard of hearing or deaf or has autism spectrum disorder and other factors.