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DEPARTMENT OF EDUCATION
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MEMORANDUM

TO: Local and Intermediate School District Special Education Directors
and Pupil Accounting Auditors

FROM: Jacquelyn J. Thompson, Ph.D., Director
Office of Special Education and Early Intervention Services

DATE: July 12, 2006

SUBJECT: Programs for Preprimary Aged Pupils and Pupil Accounting Membership
Requirements

Background

Prior to the enactment of the State School Aid Act for the 2005-06 school year, membership for pupils enrolled in programs for Early Childhood Special Education (ECSE) was determined by a .2 FTE for each day the pupil was enrolled and having contact with the early childhood special education teacher. This way of determining pupil membership for children enrolled in these programs was based upon requirements in the State School Aid Act and the Revised School Code which prescribed a set number of days during which a school district must provide instruction. In 2002-03 Section 101 of the State School Aid Act was amended to remove the requirement of school districts to provide 180 days of pupil instruction. This change now required the basis of calculating membership for pupils enrolled in ECSE programs to also change from a number of days requirement to a number of hours requirement.

Therefore in 2005-06, Section 6(4) of the State School Aid Act was amended to require school districts to provide 450 hours of instruction for pupils enrolled in special education programs described under Administrative Rule 340.1754 and 180 hours of instruction for pupils enrolled in special education services described under Administrative Rule 340.1755 to generate a full FTE for pupil membership purposes. This change has created numerous questions by both special education and pupil accounting personnel.

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Legal Requirements for Counting Pupils Under the Age of 5 for State Aid Membership

There are many sections of the State School Aid Act which describe how all pupils are to be counted for membership purposes. Pertinent sections of the State School Aid Act include:

Section 6(4)(l) – “Pupils to be counted in membership shall be not less than 5 years of age on December 1 and less than 20 years of age on September 1 of the school year, except a special education pupil who is enrolled and receiving instruction in a special education program or service approved by the department...”

Section 6(4)(q) – “The number of class hours used to calculate full-time equated memberships shall be consistent with Section 101(3).”

Section 6(4)(AA) – “Full time equated memberships for preprimary aged special education pupils who are not enrolled in kindergarten but are enrolled in a classroom program under R340.1754 of the Michigan administrative code shall be determined by dividing the number of class hours scheduled and provided per year by 450. Full-time equated memberships for preprimary aged special education pupils who are not enrolled in kindergarten but are receiving non-classroom services under R340.1755 of the Michigan administrative code shall be determined by dividing the number of hours of service scheduled and provided per year per pupil by 180.”

Section 6(8) - defines daily attendance, excused absence, unexcused absence and class instruction.

Section 101(3)(a) – “Except as provided in this section, each district shall provide at least 1,098 hours of pupil instruction.”

Section 101(7)(a) – “Except as provided in this subsection, a pupil must be scheduled for at least the minimum number of hours of instruction...”

The implications for counting pupils in membership are clear. To generate a full pupil membership FTE, school districts are required to provide programs which schedule and provide 1,098 hours of pupil instruction. Also for pupil membership purposes, pupil instruction is defined as a period of time during the day when pupils and a certificated teacher or legally qualified substitute teacher are together and instruction is taking place (Section 6(8)).

The State School Aid Act describes certain situations in which less than 1,098 hours of pupil instruction are required to generate a full membership FTE. Two involve programming for special education pupils under the age of five and require that the pupils be enrolled and receiving services under either Special Education Administrative Rule 340.1754 or Administrative Rule 340.1755.

I. Special Education Administrative Rule 340.1754 Programs

Special education programs operated under Administrative Rule 340.1754 require instruction be provided by an approved early childhood special education teacher. The program shall be available for a minimum of 360 clock hours and a minimum of 144 days of instruction. The program shall not have more than twelve students for one teacher and one aide at any one time and the teacher shall not have responsibility for the educational programming for more than twenty four different students. If the above criteria are not met, then the program is not an approved special education program under Administrative R340.1754 and the pupils enrolled in the program are not eligible for membership as stated in Section 6(4)(l) of the State School Aid Act.

The Pupil Accounting and Attendance Manual enumerates the three criteria required for claiming membership for pupils enrolled in programs approved under R340.1754.

1. The program must meet the special education rule to be a bona fide program. The program must be scheduled and provided for a minimum of 144 days and 360 hours. (Note that an Administrative Rule waiver may be applied for to allow membership to be counted if the program is not scheduled and does not provide the minimum number of days and hours as required by Administrative Rule.)
2. The program must be provided by a early childhood special education teacher.
3. The pupil must have an IEP and be enrolled and receiving instruction on or before the pupil membership count day.

If the above three conditions are met, membership is eligible to be claimed for the pupil. Membership for these pupils is calculated by determining the number of instructional hours scheduled and provided divided by 450. The question now becomes how to determine instructional hours scheduled and provided. The State School Aid Act defines instructional time in Section 6(8) as the period of time when teachers and pupils are together and instruction is taking place.

A. How to Determine Membership for Pupils Enrolled in R340.1754 Programs

The first step in determining the amount of pupil membership FTE is to refer to the pupil's IEP. The IEP will indicate either the number of instructional hours the pupil is scheduled to attend or the number of days that the pupil is scheduled to attend. If the IEP indicates the attendance in days, it should be converted to hours based upon the number of hours the program operates daily.

The next step is to meet the test for "provided." Local and intermediate school district boards of education have the authority to adopt attendance policies addressing the number of days (and/or hours) a pupil may lose due to illness or other causes. Although the law does not mandate that school district policies distinguish between excused and unexcused absences, the State Board of Education has taken the position that districts should make this distinction. (Refer to the Michigan Department of Education Recommends Issue Paper, "Compulsory School Attendance, Attendance Policy and Grades", dated October 2004.) Since special education pupils under the age of 5 do not qualify under the compulsory

attendance section the Michigan Revised School Code (Section 380.1561), the district should have a policy distinguishing between what an excused absence for these pupils is and what is described as "willful non-attendance" as defined in MCL 712A.2(4) of the Probate Code. Appropriately documented excused absences as defined by local school district school board policy for special education pupils under the age of 5 would meet the test of "scheduled and provided" as it would for any pupil for which membership is claimed.

B. Pupil Accounting Auditing Requirements for Pupils Enrolled in R340.1754 Programs

By definition in the Pupil Accounting/Auditing Manual, pupils enrolled in programs operated as Early Childhood Special Education are Non-traditional/Non-conventional pupils. The Pupil Accounting/Auditing Manual requires all school districts to identify each pupil who participates in a non-traditional program. As non-traditional pupils, the ISD Pupil Accounting Auditor will need to review the IEP for each of the pupils in the appropriate audit sample. If the IEP matches the pupil's attendance record during the count period, the auditor may stop. For example, if the pupil has an IEP which states "3 days a week of an Administrative Rule 340.1754 program" and during the count period, the auditor finds attendance of the pupil on a Monday, Wednesday and Friday, the auditor may then stop. The number of hours of instruction is then annualized over the school year and divided by 450 to determine the pupil's FTE.

If the IEP does not match the pupil's attendance pattern, then the auditor will review the attendance pattern over the 30 day window period and annualize the attendance over the entire school year. For example, if the pupil has an IEP which states "3 days a week of an Administrative Rule 340.1754 program" and during the count period, the auditor found attendance on a Monday and Wednesday only the count week. The auditor would then look for an "excused absence" for the third day that week. The auditor would then check the next four weeks or the 30 day window period. The auditor would sum the number of hours of pupil instruction provided and annualize it over the entire school year. If the auditor were to find only two days attendance each week for each of the four weeks, the auditor would then annualize these hours over the entire school year and divide them by 450 to create the FTE. The fact that the pupil's attendance did not match the IEP is not a pupil membership issue.

Pupil membership is reported by program. Programs which have pupils enrolled under the age 5 which do not meet the qualifications of R340.1754 are to be counted under the certification of the special education teacher and must meet the required number of hours required of that special education program (i.e. 1,098) for a pupil to be counted as a full FTE. Furthermore, the Special Education Personnel Approval System requires that if in any particular special education program more than half of the pupils assigned to that program are less than 6 years of age, the teacher must be a qualified early childhood special education teacher.

II. Special Education Administrative Rule 340.1755 Services

Special Education Administrative Rule 340.1755 describes a set of services which are individualized by the IEP or combined IEP/IFSP to young children with disabilities or

developmental delay. This is not a classroom program but is based upon the needs of the child. The services shall be provided by an approved early childhood special education teacher or approved related services staff as specified in the IEP or the combined IEP/IFSP. If related service staff are used to deliver the instructional services, they must work under the supervision of an approved early childhood special education teacher.

The services shall be provided for a minimum of two hours per week, but not less than 72 clock hours within 180 school days. The services may be provided in appropriate early childhood community or family settings. If the above day and hour requirements are not met, then the services provided do not constitute approval under R340.1755 and the pupil is not eligible for membership. (Note an Administrative Rule waiver may be applied for to allow membership to be counted if the program is not scheduled and does not provide the minimum number of days and hours as required by Administrative Rule.)

The Pupil Accounting and Attendance Manual enumerate the following criteria required for claiming membership for pupils receiving services under Special Education Administrative Rule 340.1755:

1. The pupil must have an IEP/IFSP that was effective as of the count day.
2. The pupil must be assigned to an appropriately approved early childhood special education teacher or related service staff and be receiving services on or before the count day.
3. The pupil must be scheduled and provided the minimum of two hours a week and 72 hours within 180 school days as required by the R340.1755.

If the above conditions are met, membership is eligible to be claimed for the pupil. Membership for these pupils is calculated by determining the number of instructional hours scheduled and provided divided by 180. The question now becomes how to determine the instructional hours scheduled and provided. The State School Aid Act defines instructional time in Section 6(8) as the period of time when teachers and pupils are together and instruction is taking place. Clearly this is an individualized provision of service as defined in the rule and the teacher student contact time needs to be determined.

A. How to Determine Membership for Pupils Receiving Services Under R340.1755

The first step in determining the amount of pupil membership FTE is to refer to the pupil's IEP or combined IEP/IFSP. The IEP or combined IEP/IFSP will indicate the number of instructional service hours the pupil is to receive, (for example as two hours per week of services under R340.1755.)

The next step is to meet the test for "provided". Local and intermediate school district boards of education have the authority to adopt attendance policies addressing the number of days (and/or hours) a pupil may lose due to illness or other causes. It should be noted that attendance policies, should be equitable for all pupils generating membership FTE. Since pupils receiving services under R340.1755 generate pupil membership, school districts need to establish policies for these students regarding excused absences and what is defined as "willful non-attendance." Appropriately documented excused absences would

meet the test of "scheduled and provided" as it would for any pupil for which membership is claimed.

School districts have requested that the Office of Special Education and Early Intervention Services allow for flexibility under the rule in the scheduling of the provision of services. A district or intermediate district may apply for a departmental waiver or use special education Administrative Rule 340.1832(e) and the ISD plan process to schedule and provide services under R340.1755 in a different manner. Districts may seek to revise their ISD plan or to waive either the section of the rule requiring two hours per week, the section of the rule requiring 72 hours within 180 school days or both. However, either a waiver or a revision to the ISD plan must be submitted to the Department and approved prior to the end of the school year for which the waiver or plan revision is sought. The Department will not review or approve waivers or plan revisions retroactively.

B. Pupil Accounting Auditing Requirements for Pupils Receiving Services Under R340.1755

By the definition in the Pupil Accounting/Auditing Manual, pupils receiving services for Early Childhood Special Education under R340.1755 are also considered Non-traditional/Non-conventional pupils. The Pupil Accounting/Auditing Manual requires all school districts to identify all non-traditional pupils. It is anticipated that school districts who have either a waiver approved by the Department or approval through the ISD plan process to provide services in an alternate delivery model, would attach such documentation to that requested by the ISD Pupil Accounting Auditor in preparation for the desk audit. As a non-traditional pupil, the ISD Pupil Accounting Auditor will need to review the IEP or combined IEP/IFSP for each of the pupils in the appropriate audit sample. If the IEP or combined IEP/IFSP matches the pupil's attendance record during the count week, the auditor may stop. The auditor would then annualize the number of service hours provided and divide them by 180 to determine the FTE for the pupil.

If the IEP does not match the pupil's attendance pattern during the count week, the ISD Pupil Accounting Auditor will review the attendance pattern over the 30 day window period and annualize the attendance pattern over the entire school year. The Pupil Accounting Auditor will look for the district's policy on excused/unexcused absences and will consider "willful nonattendance" situations as defined in the Probate Code. Please be reminded that just having the early childhood special education teacher or related services personnel go to the child's home does not constitute the generating of instructional contact time (as referenced on page one of the memo) for FTE purposes. If the child is not there or the parent refuses services, this does not constitute instructional time and cannot be counted as such, since these pupils do not fall under the Compulsory Attendance laws and are not required to receive services.

We would expect the material in this memo to be effective beginning for the 2006-07 school year and would encompass the September 2006 Pupil Membership Count. If you have further questions regarding counting children enrolled in programs under R340.1754 or R340.1755 for membership, please contact Ms. Dianne Easterling at (517) 241-4517.

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If you have questions regarding special education programs for children under the age of five, please contact Dr. Stephanie Kujaczynski at (517) 241-6354.

If you have questions regarding the special education administrative rules, ISD plans or rule waivers, please contact Dr. Joanne Winkelman at (517) 373-1696.