

Special Education Problem Solving Process

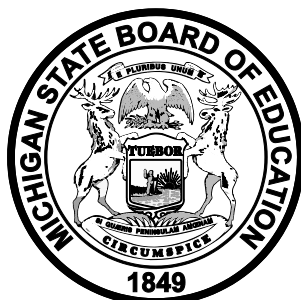
Michigan Department of Education

Office of Special Education

State Complaint Procedures

May 2013





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Statement of Compliance With Federal Law

The Michigan Department of Education (MDE) complies with all federal laws and regulations prohibiting discrimination and with all requirements of the U.S. Department of Education.

**Michigan Department of Education
Office of Special Education**

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P.O. Box 30008
Lansing, MI 48909

(517) 373-0923

www.michigan.gov/ose-eis

Statement of Authority

The *Individuals with Disabilities Education Act* (IDEA) provides federal funds to assist states in educating children and young adults with disabilities. The IDEA requires each participating state to ensure that school districts and other publicly funded educational agencies providing special education programs and services in the state comply with the requirements of the IDEA and its implementing regulations.

Michigan state law requires local school districts and public agencies to provide appropriate special education and related services and requires the Michigan Department of Education (MDE) to enforce all laws governing special education programs. The MDE has adopted rules implementing those requirements. The Office of Special Education (OSE) of the MDE enforces the compliance obligations under the IDEA and Michigan law.

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Glossary

ALJ—Administrative Law Judge

Allegation—A statement describing how a district or program has violated the MARSE, Michigan Law, or the IDEA

Compensatory Services—Compensatory services are services provided to make up for services that were not delivered

Complainant—The person or organization filing the complaint

Consideration—Something that is to be kept in mind when making a decision

Due Process—A formal administrative hearing with an impartial administrative law judge who is not an employee of the OSE or any school district or educational program

FAPE—A free appropriate public education; one of the key parts of the IDEA

FERPA—*Family Educational Rights and Privacy Act*

IDEA—*Individuals with Disabilities Education Act*

IEP—Individualized Education Program

IFSP—Individualized Family Service Plan

Investigator—The person(s) assigned by the OSE and the ISD to conduct the investigation related to the allegations

ISD—Intermediate School District; may also be called an Educational Service Agency (ESA), a Regional Educational Service Agency (RESA), or a Regional Educational Service District (RESD)

ISD special education compliance department—Staff positions may include titles such as planner/monitor or compliance specialist

LEA—Local Educational Agency

MAHS—Michigan Administrative Hearing System; the MAHS conducts administrative hearings for all state agencies, including the MDE-OSE

MARSE—*Michigan Administrative Rules for Special Education*

MDE—Michigan Department of Education

Mediation—A voluntary process where a neutral third-party mediator assists and facilitates the complainant and district in reaching a mutually acceptable resolution of the dispute

MSEMP—Michigan’s Special Education Mediation Program, an OSE funded project that provides mediation and meeting facilitation services

Procedural Safeguards Notice—A notice document that identifies parent and student rights as they relate to the IDEA or the MARSE

OSE—Office of Special Education

OSEP—U.S. Office of Special Education Programs

PSA—Public School Academy (charter school)

R—Rule

Reimbursement—Reimbursement means paying back; the OSE may order reimbursement for services that the parent purchased privately because the school district did not give appropriate services

SEA—State educational agency; the MDE is the SEA for Michigan

§—Section

Systemic—A district-wide system problem that affects all the students in a district

I. Introduction to Special Education Problem Solving

An organization or individual, such as a parent, may disagree with a public agency, such as a school district, regarding the education of a student with a disability. When there is a dispute between these two parties, there are several special education problem solving options.

The most effective problem solving methods use direct, early, meaningful communication. Anytime a parent has a question or concern about a student's education, the parent is urged to attempt to discuss the issue(s) directly with the school district.

Direct and early communication is part of collaborative problem solving methods, which increase the likelihood that both parties will be satisfied with the final outcome because both parties are involved in the resolution.

There are several agencies and individuals who may assist parents in special education problem solving. Examples include:

- Other parents
- Student's classroom teacher
- Student's special education teacher or service provider
- Building principal
- Special education director
- Superintendent
- Local school board
- Intermediate school district (ISD) special education department

The following are the most common options for special education problem solving:

- Collaborative problem solving:
 - Informal meeting
 - Facilitated meeting
 - Mediation
- State complaint
- Due process

For further information regarding these processes, see the document *Comparison of the Special Education Problem Solving Options* at www.michigan.gov/ose-eis.

II. Collaborative Problem Solving

If a parent (or other individual/organization) disagrees with a school district (or other public agency) regarding the education of a student with a disability, the parties are urged to try to use a collaborative problem solving method.

Informal Meeting

An informal meeting allows the parent and school district to resolve educational issues without intervention of the Office of Special Education (OSE). The issues addressed in an informal meeting do not have to concern special education requirements addressed in the *Michigan Administrative Rules for Special Education* (MARSE), Michigan Law, or the *Individuals with Disabilities Education Act* (IDEA).

Parents and school district staff do not have to agree on what happened or why but still may agree on steps to address the concern. An informal meeting allows both parties to collaborate more effectively, reach decisions faster, preserve relationships, and avoid costly hearings and complaints. An informal meeting may occur at the local or ISD level.

Facilitated Meeting

A facilitated meeting may be especially helpful for an Individualized Education Program (IEP) team or Individualized Family Service Plan (IFSP) team with complex issues. A facilitator may help ensure that all parties have an opportunity to give input, participate, and develop an appropriate IEP or IFSP.

The use of a facilitator is voluntary and must be agreed to by both parties. A meeting facilitator can be requested at no cost from the Michigan Special Education Mediation Program (MSEMP). The MSEMP is a project of the OSE that uses trained, independent facilitators. The facilitators are not employees of the OSE, a school district, or an ISD. For more information, call MSEMP at (800) 8RESOLVE [(800) 873-7658] or visit <http://msemp.cenmi.org>.

Mediation

Mediation is voluntary, confidential, and must be agreed to by both parties. This process is especially helpful in situations when parties want to resolve their issues but want a third party to assist them and when a written agreement at the end of the process is needed. A mediator works with the parties until there is a signed, written agreement or the process ends without resolution.

Effective agreements identify:

- What action(s) will be taken and when the action(s) will begin
- When the action(s) will be completed
- Who is responsible for making sure the action(s) is taken
- Who is responsible for taking the action(s)

- The time period of the agreement
- A process for review when the actions are completed
- A plan for making changes to the agreement, if needed
- What to do if a participant thinks the terms of the agreement are not being completed
- Statement of confidentiality
- The date of the agreement and the signatures of the participants

A mediator can be requested at no cost from the Michigan Special Education Mediation Program (MSEMP). The MSEMP is a project of the OSE that uses trained, independent mediators. The mediators are not employees of the OSE, a school district, or an ISD. For more information, call MSEMP at (800) 8RESOLVE [(800) 873-7658] or visit <http://msemp.cenmi.org>.

How do individuals get more information about special education problem solving?

The *Procedural Safeguards Notice* contains information about special education problem solving procedures:

www.michigan.gov/documents/mde/May09-ProceduralSafeguardsNotice_278611_7.pdf

The *Procedural Safeguards Notice* is available in other languages:

www.michigan.gov/mde/0,4615,7-140-6530_6598_36168-188305--,00.html.

Other options are to contact:

- The local district special education department
- The ISD special education department
- The Michigan Special Education Mediation Program (MSEMP): <http://msemp.cenmi.org> or (800) 8RESOLVE [(800) 873-7658]
- The Michigan Alliance for Families: www.michiganallianceforfamilies.org or (800) 552-4821
- The Michigan Department of Education (MDE), Office of Special Education (OSE): www.michigan.gov/ose-eis or (888) 320-8384

III. State Complaint

A parent (or other individual/organization) may file a state complaint if he or she believes a school district (or other public agency) violated a requirement of state or federal special education law. The parties may choose to first pursue resolution through a collaborative problem solving method, which could eliminate the need for filing a state complaint. Attempting collaborative problem solving is encouraged but not required before filing a state complaint.

Filing a State Complaint

What is a state complaint?

A state complaint is a written, dated, signed statement alleging that a school district or other public agency has violated a requirement of state or federal special education law. A state complaint may be about either an individual student(s) or a district-wide systemic problem.

Who can file a state complaint?

Any person or organization may file a state complaint. The person filing the complaint does not have to be a parent or live in Michigan. The person or organization filing the complaint is the complainant.

When can a state complaint be filed?

The state complaint must be filed within one year of the alleged violation. The filing date is the date the complaint is received by the OSE.

What must be included in a state complaint?

All complaints must be written and signed by the complainant. All complaints must include:

- A statement that a public agency has violated the MARSE (state special education rules), Michigan special education law, or the IDEA (federal special education law)
- Facts on which the statement is based
- Contact information for the complainant

A complaint about a specific student must also include:

- The student's name and address (or other available contact information if the student is homeless)
- The name of the school the student is attending
- A description of the nature of the problem of the student, including facts relating to the problem
- A possible resolution to the problem

How is a state complaint filed?

A written, signed state complaint is filed on the date it is received by the OSE. The OSE will not accept anonymous or verbal complaints. A complaint may be faxed to (517) 373-8414, or mailed or hand delivered to the following address:

Michigan Department of Education
Office of Special Education
608 West Allegan
P.O. Box 30008
Lansing, MI 48909

The OSE forwards a copy of the state complaint to the public agency.

A state complaint form is provided at the end of this document (Appendix B). The form, when completed, provides the OSE with the information required by law to investigate the complaint.

A complainant is not required to use this form. If the form is not used, all the information listed in the section above (under the heading "What must be included in a state complaint?") must be included in the complaint. If the complaint does not contain all the required information, the OSE will contact the complainant. The complaint will not be considered filed until all required information is received by the OSE.

State special education rules require a school district to offer to help a complainant to file a state complaint. State rule also requires an ISD to help a complainant write a state complaint if requested.

Resolutions of a State Complaint

How much time does the OSE have to resolve a state complaint?

The OSE must resolve the complaint and issue a final decision within 60 calendar days from the date that the OSE receives the complaint. Federal law allows for the OSE to extend the timeline for exceptional circumstances. The OSE will notify the complainant and the public agency if the timeline is extended and will indicate when the final decision will be issued. The complainant and public agency may also agree to request an extension in order to engage in an informal meeting or mediation.

If a due process complaint is filed about issues that are also in a state complaint, the 60 calendar day timeline is stopped. When the due process hearing ends, the 60 calendar day timeline is resumed for any allegations in the state complaint that were unresolved by the due process hearing.

Collaborative Problem Solving Options

At any time during a state complaint investigation, the complainant and school district (or other public agency accused of the violation) may agree to request an extension of the 60 calendar day timeline in order to engage in an informal meeting or mediation.

A written request for an extension of the timeline must be submitted to the OSE case manager. The request must include a statement of the complainant and school district agreement to extend the timeline and the number of days needed to extend the timeline.

The complainant and school district may resolve all, part, or none of the allegations using an informal meeting or mediation. If an agreement is reached, the complainant must notify the OSE in writing. When the OSE receives this notification, the OSE will dismiss any resolved allegations from the state complaint. If only part of the state complaint allegations are resolved, the OSE may investigate the remaining allegations, depending on the agreement.

Effective agreements will identify:

- What action(s) will be taken and when the action(s) will begin
- When the action(s) will be completed
- Who is responsible for making sure the action(s) is taken
- Who is responsible for taking the action(s)
- The time period of the agreement
- A process for review when the actions are completed
- A plan for making changes to the agreement, if needed
- What to do if a participant thinks the terms of the agreement are not being completed
- Statement of confidentiality
- The date of the agreement and the signatures of the participants

Informal Meeting—An informal meeting is a way for the complainant and the school district to directly resolve the issues that prompted the complaint. The complainant and the school district do not have to agree on what happened or why, but still may agree on steps to address the concern. The steps to address the concern are documented in a written agreement that is signed by both parties.

Mediation—Mediation is a voluntary confidential process. A trained, impartial, third-party mediator assists the complainant and school district in reaching a mutually acceptable resolution of the dispute. If the complainant and school district agree to try mediation, the OSE will provide the mediator at no cost. The steps to address the concern are documented in a written agreement that is signed by both parties.

Admission of Noncompliance

The public agency may admit noncompliance in writing to address one or more of the allegations in the complaint. The OSE will verify admissions of noncompliance. The OSE will order corrective action and require proof of compliance related to each allegation in the complaint, including those allegations for which the public agency admits noncompliance.

Dismissal

The OSE will dismiss allegations in a state complaint for the following reasons:

- The alleged violation is not governed by any special education law, regulation, or rule.
- The alleged violation was resolved by the complainant and public agency through an informal meeting or mediation, and the parties notified the OSE of the agreement in writing.
- The alleged violation was previously resolved in a due process hearing or state complaint.
- The alleged violation is one year old or older.

If only part of the allegations in a state complaint are dismissed, the OSE will investigate the remaining allegations.

Withdrawal

If at any time a complainant decides to stop the complaint process entirely, the complainant may make a written request to the OSE to withdraw the complaint.

Investigation

When complaint allegations require investigation, the OSE will do so by fact finding, conducting interviews, and reviewing documents. If determined necessary by the OSE, an on-site investigation will be conducted. The OSE will ultimately issue a final decision within the 60 calendar day timeline.

State Complaint Investigation

The OSE will collaborate with the assigned ISD investigator to investigate the allegations in the complaint by fact finding, conducting interviews and reviewing student records, correspondence, and other information. The OSE may conduct an investigation independent of the ISD.

The OSE and the ISD will encourage the complainant and school district (or other public agency accused of the violation) to resolve the complaint during the first days of the state complaint investigation. Prior to the investigation, the school district, at its discretion, may submit a written proposal to the OSE to resolve the complaint. Information regarding other special education problem solving methods

can be found in the previous section under the heading “Resolutions of a State Complaint.”

What are the steps in a state complaint investigation?

1. The OSE and the ISD review the complaint.
2. The OSE and the ISD, together, will call the complainant to clarify the allegations. If the complainant is not available for the clarifying call after reasonable attempts are made by the OSE and the ISD, the investigation will proceed.
3. After the clarifying call, the OSE sends a letter to both parties and the ISD listing the allegations to be investigated.
4. The OSE and the ISD, together, will call the school district for its response to the allegations.
5. The OSE and the ISD investigators conduct fact finding in the form of telephone or personal interviews with the complainant, school district staff, and other people with relevant information. The OSE and the ISD review student files and other relevant documents. The complainant and school district staff may be contacted more than one time during the course of the investigation. The OSE determines if an on-site investigation is necessary.
6. The OSE and the ISD review documents and interviews that were conducted, and determine whether the school district’s actions comply with the MARSE (state special education rules), Michigan special education law, or the IDEA (federal special education law).
7. The OSE issues a final decision to the complainant and the school district, which includes the complaint allegations, governing rule or regulation, findings of fact, conclusions, and an explanation of how the findings of fact and law support the conclusions.
8. The final decision is mailed to the complainant, the parent, the school district, and the ISD. The final decision is considered a public record. The final decision will not include personally identifiable information about the student (e.g., the student’s name or birth date, parent’s name, address, etc.).
9. If the school district is noncompliant, the final decision will include corrective action(s) with a timeline for completion. The school district must implement and complete the corrective action(s) and provide proof(s) of compliance to the OSE.
10. When all required proof(s) of compliance are received and found acceptable by the OSE, the complaint is considered resolved and is closed. The OSE will notify all parties when the complaint is closed.

What is expected in a state complaint interview?

- The OSE and the ISD investigators, together, will conduct a telephone interview with the complainant and ask specific questions about the allegations made in the original written complaint. The interview includes questions about what happened, when the events happened, and who was involved.
- Following the interview with the complainant, the OSE and the ISD investigators conduct a similar telephone interview with the school district.
- Participants may contact the interviewer later if the participant remembers important information not shared during the interview.

How should a complainant prepare for a state complaint interview?

- Schedule the interview when there is time so that the conversation will not be interrupted.
- Re-read the original written complaint and review the allegations to be investigated in the complaint.
- Have information (including documents) ready that will help the investigators understand the issues.
- Have calendars or date books ready to remember when events took place.
- Review the state complaint procedures and have a copy available.
- If a complainant chooses not to be interviewed or submit additional information, the investigation will proceed.

Corrective Action and Proof of Compliance

When the OSE determines noncompliance, it will order a corrective action and require proof of compliance. The purpose of corrective action is to correct the noncompliance. Examples of possible corrective action include:

- Reviewing and, if necessary, revising procedures
- Conducting an evaluation, convening an IEP team meeting, conducting an educational benefit review, providing staff training or submitting an assurance of future compliance
- Providing compensatory services or reimbursing educational expenses

How do the OSE and the ISD make sure the school district complies with the final decision and corrective action(s)?

The OSE and the ISD will monitor implementation of the corrective action and provide technical assistance regarding the corrective action as required.

The OSE does not impose penalties or fines as part of corrective action. However, if a school district (or other public agency accused of the violation) refuses to comply with any corrective action, the OSE may ultimately withhold funds from the school district.

How do individuals get more information about the state complaint process?

The *Procedural Safeguards Notice* contains information about special education problem solving procedures:

www.michigan.gov/documents/mde/May09-ProceduralSafeguardsNotice_278611_7.pdf

The *Procedural Safeguards Notice* is available in other languages:

www.michigan.gov/mde/0,4615,7-140-6530_6598_36168-188305--,00.html

Other options are to contact:

- The ISD special education department
- The Michigan Department of Education (MDE), Office of Special Education (OSE): www.michigan.gov/ose-eis or (888) 320-8384

Appendix A: Request for State Complaint Investigation

Parents and other individuals and organizations may file a complaint if they believe a school district or other educational agency has violated one or more requirements of the **MARSE, Michigan special education law, or the IDEA.**

Person filing the complaint

Name

Address

City/State/Zip

Telephone

Email

Complainant's relationship to student:

Parent Citizen Attorney Advocate Self

The public agency the complaint is against

Name of Public Agency

The student involved (required if the alleged violation is regarding a specific student)

Name of Student

Home Address (include if different from above; if homeless, include other contact information)

City/State/Zip

Name of School Student is Attending

Number and list each alleged violation separately. Describe the alleged violation and specific facts related to the alleged violation. If possible, include names, dates, and locations. Additional pages may be attached if needed.

Proposed resolution (required if the alleged violation is regarding a specific student)

For each of the above alleged violations, what is the proposed resolution? Attach additional pages if needed.

This state complaint investigation request must be signed and mailed or faxed to the OSE.

Michigan Department of Education
Office of Special Education
608 West Allegan
P.O. Box 30008
Lansing, MI 48909
Fax (517) 373-8414

Signature (required)

Date

If the person filing the complaint is not the student's parent, or if the student has reached the age of majority (18 in Michigan), this state complaint investigation request should include a consent for the release of information to the complainant, signed by the student's parent or the student if age 18 or older, before any information will be shared with the complainant. If authorization for release of information is not provided, then no information will be shared with the complainant subsequent to the issuance of this office's final decision in this matter.

Release of Contact Information to MSEMP

Are you interested in mediation?

A mediator can be requested at no cost from the Michigan Special Education Mediation Program (MSEMP). The MSEMP is a project of the Office of Special Education (OSE) that uses trained, independent mediators. The mediators are not employees of the OSE, a school district, or an intermediate school district (ISD). Mediation may proceed at the same time as the complaint investigation process.

- I am interested in more information about mediation and authorize the OSE to forward my name, phone number, and/or email address from the complaint to the MSEMP. I understand the MSEMP will contact me directly.

Signature (required)

Date

Appendix B: State Complaint and Due Process Complaint Comparison

State Complaint	Due Process Complaint
<ul style="list-style-type: none"> • The state complaint process is a review of the situation by the OSE usually with the assistance of ISD special education staff. • A state complaint must be filed within one year of the events concerning the complaint request. • Anyone may file a state complaint alleging a violation of the MARSE, Michigan special education law, or the IDEA. • The state complaint process is <i>intended to be less adversarial</i> than the more formal due process hearing procedures. • The OSE and the ISD staff will review the paperwork, talk to parents and staff, and ensure the school district's actions comply with the MARSE, Michigan special education law, or the IDEA. • There is no formal testimony by experts or others. • There are no oaths, subpoenas, or other formal due process protections. • Students do not automatically “stay put” in their current placement while the OSE and the ISD is investigating a complaint. The OSE may order “stay put” when necessary. 	<ul style="list-style-type: none"> • A due process hearing is a formal administrative hearing with an impartial administrative law judge who is not an employee of the OSE, any school district, or educational program. • A due process complaint must be filed within two years of the events concerning the hearing request. • A parent may request a due process hearing when there is disagreement with the identification, evaluation, educational placement, or provision of a free appropriate public education to a student who may have a disability. • Parties may provide expert witnesses, subpoena, and cross-examine witnesses. • The parties may enter and object to evidence and have a record of the proceedings. • Testimony is under oath. • The student must “stay put” in the current placement pending the results of the hearing, unless the parties agree otherwise. • The final Decision and Order may be appealed to state or federal court. • The court will look at the hearing record, along with the final Decision and Order. • Parents who are successful in an administrative hearing may ask the court for reimbursement of parents’ reasonable attorney fees.

Appendix C: Examples of Alleged Violations, Supporting Facts,
and Proposed Resolutions for Individual Students

Alleged Violations	Supporting Facts	Proposed Resolutions
The school district did not implement my student's IEP/IFSP.	My student's IEP/IFSP includes 30 minutes per week of speech-language services, and I heard at a parent-teacher conference that he had not seen the speech therapist all year.	Provide make-up services to my student.
The school district has not provided a FAPE with reading instruction for my student.	My student is in the 4th grade and is still at a beginning reading level. At the last IEP meeting I asked for more reading instruction and an IEP goal about reading. The district refused.	Have a new IEP meeting and include a reading goal.
The school district did not complete a special education evaluation within 30 school days.	I asked for a special education evaluation because my 6th grade student has had a difficult transition to middle school. He is failing his classes and has been suspended several times. I signed a consent form when I met with the counselor in October. It is now April and I never received the results of the testing, and my student is still having trouble in school.	Send me a copy of the completed evaluation and have an evaluation eligibility meeting to consider the results.
The general education teachers refuse to accommodate my student's disability.	My 11th grade student has a specific learning disability. Her October IEP says teachers will let her have extra time to complete assignments and she can take tests in the resource room so they can be read to her. Her teachers lower her grades on assignments when she takes extra time to complete them and will not let her go to the resource room to take tests.	Provide training to the general education teachers and make sure they implement my student's IEP.
The school has suspended my student and did not do a manifestation determination review (MDR). He is not getting any services.	My student has been suspended three times this year for a total of 21 days. I told the principal that my student's behavior is caused by his disability and he should not be suspended. The school has not done an MDR and they did not give my student any services while he was suspended.	Give my student the services he needs and hold an MDR.

Appendix D: Worksheet for Alleged Violations, Supporting Facts,
and Proposed Resolutions for Individual Students

To file a state complaint about a violation of special education law regarding a specific student, the written complaint must include the alleged violation with supporting facts and a proposed resolution.

This worksheet is an optional tool to help you organize your information. You can also attach the worksheet to the state complaint form (Appendix B) and submit as an additional sheet if needed. You are not required to use this form.

Alleged Violations	Supporting Facts	Proposed Resolutions
1.		
2.		
3.		
4.		
5.		