



FOCUS on Results

Office of Special Education and Early Intervention Services

February 2010

Accountability

Assessment

Curriculum & Instruction

Dispute Resolution

Early Childhood

IEPs & IFSPs

Personnel

State & Federal Policy

Transition

Other

FOCUS on Results offers valuable, up-to-date information for education stakeholders, including parents, teachers, school administrators, counselors, and others.

2009-2010, Volume 8, Issue 2
Packet #17, Article 1

This guidance and technical assistance article describes the Michigan Department of Education (MDE), Office of Special Education and Early Intervention Services (OSE-EIS) dispute resolution processes, including informal and formal resolution. Several procedure details changed when the new *Michigan Administrative Rules for Special Education (MARSE)* took effect on April 3, 2009. The OSE-EIS continues to encourage informal resolution of disputes.

This document is adapted from the document *Resolving Special Education Disputes* which can be found on the MDE, OSE-EIS Web site at www.michigan.gov/ose-eis.

Resolving Special Education Disputes: Special Education State Complaint Procedures

For students receiving special education services, there are often decisions to make regarding issues such as classroom settings and appropriate programs and services. While parents, educators, students, and other involved stakeholders work together to ensure positive outcomes for students, they may not always agree on what is best. Parents and other stakeholders who have concerns about special education services have various options available for addressing their concerns.

The Michigan Department of Education (MDE), Office of Special Education and Early Intervention Services (OSE-EIS) provides both formal and informal dispute resolution procedures and guidelines. Several procedural details changed with the new *Michigan Administrative Rules for Special Education (MARSE)*, which took effect on April 3, 2009.

This *FOCUS on Results* document will review the changes, as well as provide guidance and technical assistance for the most common MDE dispute

resolution options. The OSE-EIS encourages informal resolution of disputes.

Informal Dispute Resolution

Informal dispute resolution refers to a number of collaborative processes for resolving special education concerns. These processes enable those with concerns to seek solutions through direct discussion. Discussion may be aided by neutral individuals who facilitate communication and problem solving while allowing the parties to make their own decisions.

Informal dispute resolution processes may be used instead of filing a formal state complaint. Parties may also pursue informal resolution before or after filing a formal state complaint. One or more informal processes may be used. The following are examples of informal dispute resolution processes.

Ask for Intermediate School District (ISD) Assistance—The ISD can be used as a resource for



State Board of Education

Kathleen N. Straus, *President*
 John C. Austin, *Vice President*
 Carolyn L. Curtin, *Secretary*
 Marianne Yared McGuire,
Treasurer
 Nancy Danhof, *NASBE Delegate*
 Elizabeth W. Bauer
 Reginald M. Turner
 Casandra E. Ulbrich

Ex-Officio

Jennifer M. Granholm,
Governor
 Michael P. Flanagan,
*Superintendent of
 Public Instruction*



FOCUS on Results is produced and distributed through an IDEA mandated activities initiative known as the Center for Educational Networking, awarded by the Michigan Department of Education (MDE). The opinions expressed herein do not necessarily reflect the position or policy of the U.S. Department of Education and no endorsement is inferred. This document is in the public domain and may be copied for further distribution when proper credit is given. For more information or inquiries about this project, contact the Michigan Department of Education, Office of Special Education and Early Intervention Services, P.O. Box 30008, Lansing, MI 48909.



2009-2010, Volume 8, Issue 2
 Packet #17, Article 1

stakeholders with questions or concerns about special education services. Depending on the issue, the ISD may be able to help resolve the problem without a formal state complaint. If a formal state complaint is filed, the ISD will collaborate with the MDE to investigate the complaint in a formal manner. Even with the formal complaint filed, the ISD may still be available for assistance through some informal procedures.

Seek Local Resolution—Local resolution is direct contact between parties. Parties do not have to agree on what happened or why but may agree on steps to address the concern. If the complainant (the person alleging the district is not in compliance) already filed a formal state complaint, the agreement should be documented in writing and signed by the participants.

The MDE should then be given a written notice of the agreement. The MDE will contact all parties to verify the status of the agreement and may close the state complaint or choose to investigate any remaining issues. If no agreement is reached, or the MDE is not notified of an agreement, the MDE will begin its investigation.

Hold an Individualized Education Program (IEP) Team Meeting and/or Facilitated IEP Team Meeting—A neutral facilitator may be requested to support the IEP team process and can help ensure that all viewpoints and ideas are heard. If the IEP team meeting results in an agreement with a formal state complaint already filed, the complainant and public agency must send written notice of the agreement to the MDE.

Use Mediation—Mediation is a voluntary process in which concerns may be addressed with a neutral, trained mediator. The mediator assists the complainant and public agency in discussing the issues, generating options, and negotiating a resolution. The mediator has no authority to impose an outcome. Successful mediation results in a written agreement signed by the parties, and this agreement is enforceable in court.

The MDE encourages the parties to consider mediation. If the parties agree to use mediation, the MDE will provide the mediator at no cost to the parties if they choose to use the Michigan Special Education Mediation Program (MSEMP).

Michigan Administrative Rule 340.1701a(c) defines a state complaint; it states:

- (c) "Complaint" means a written and signed allegation that includes the facts on which the allegation is based, by an individual or an organization, that there is a violation of any of the following:
 - (i) Any current provision of these rules.
 - (ii) 1976 PA 451, MCL 380.1 et seq., as it pertains to special education programs and services.
 - (iii) The individuals with disabilities education act of 2004, 20 U.S.C., chapter 33, §1400 et seq., and the regulations implementing the act, 34 C.F.R. part 300 and 34 C.F.R. part 303.
 - (iv) An intermediate school district plan.
 - (v) An individualized education program team report, hearing officer decision, administrative law judge decision, or court decision regarding special education programs or services.
 - (vi) The state application for federal funds under the individuals with disabilities education act.

The parties may agree to use an outside mediator at public agency expense.

Mediation is available for the complainant and the public agency if local resolution or an IEP team meeting does not result in agreement. However, the parties may choose to pursue mediation without first using a local resolution process or conducting an IEP team meeting.

If a state complaint is filed, and both parties choose to pursue mediation, the MDE will suspend the investigation until the end of the mediation process. After the mediation process, either the public agency or the complainant must provide the MDE with written notification of a complete agreement, partial agreement, or no agreement. The MDE will contact all parties to verify the status of the agreement and may close the state complaint, or investigate remaining issues, depending on the agreement.

If no agreement is reached, the MDE will resume its investigation. Because the MDE investigation is suspended during mediation, the parties must notify the MDE if no agreement is reached or else the investigation will not resume.

Propose a Corrective Action—If a state complaint is filed, and the public agency agrees that a violation has occurred as alleged by the complainant, the public agency may submit a written proposal of corrective action to the MDE and the complainant that addresses the complainant’s proposed resolution. The MDE may accept the proposal or determine the corrective action based upon both the complainant’s and the public agency’s recommendations.

Formal Dispute Resolution

The formal dispute resolution process requires filing a special education state complaint. A state complaint is a formal accusation that initiates an investigation by the MDE and ISD. It is a written and signed allegation that a school district, the MDE, or other public education agency has violated:

- The *Individuals with Disabilities Education Act* (IDEA) and its implementing regulations.
- The *Michigan Administrative Rules for Special Education* (MARSE).
- The ISD Plan for the Delivery of Special Education Programs and Services.
- An IEP.
- The implementation of an administrative law judge (ALJ) decision.
- Michigan’s application for federal funds under the IDEA.

How to File a State Complaint

State complaints are filed initially with the MDE and are no longer filed with the ISD. When a complaint is filed, the MDE assigns a case manager who works with an ISD investigator on the investigation. This is called a “one-tier” system because only one investigation is necessary for each complaint.

Previously, when complaints were filed with the ISD, the ISD issued a decision that could be appealed to the MDE, which would then perform its own investigation. The MDE and ISD now collaborate in the investigation and final decision. There is no appeal process.

However, the one-tier system gives each party an opportunity to request reconsideration of the decision. Both the complainant and the district may request reconsideration if they have information that was not available during the investigation and they believe the information may change one or more of the findings of the final report.

Any person or organization may file a state complaint. The complainant does not have to live in Michigan. The state complaint must be received by the MDE and the public agency within one year of the alleged violation. Informal dispute resolution processes are still available and encouraged by the MDE, even after a state complaint is filed.

How can an informal dispute resolution be requested?

For information about dispute resolution, contact:

- The local school district’s special education administrator.
- The intermediate school district (ISD) special education department.
- The Michigan Special Education Mediation Program (MSEMP): www.cenmi.org/msemp or (800) 8RESOLVE.
- The Michigan Department of Education (MDE), Office of Special Education and Early Intervention Services (OSE-EIS): (517) 373-0923.

The MDE or ISD investigator may contact the public agency and the complainant to encourage the use of dispute resolution options.



FOCUS on Results Is Available Online

Now you can save time, and help Michigan save money, by reading *FOCUS on Results*—and all Center for Educational Networking (CEN) publications—in electronic format.

If you have access to the Web and would like to receive email updates when new issues of *FOCUS on Results* are available, send a request to info@cenmi.org or visit www.cenmi.org and click on the "Subscribe to *FOCUS*" link.

Visit www.cenmi.org often and learn about news and events of interest to the special education community.



A state complaint must meet the criteria set forth in Rule 340.1701a(c) of the MARSE and §300.153(b)(c)(d) of the IDEA (see boxed item below). The state complaint is not considered filed, and the investigation timeline does not begin, until both the MDE and the public agency receive a copy of the state complaint that has all of the components required by the IDEA regulations.

There is no specific form required for a state complaint. However, a model state complaint form is available on the MDE Web site at www.michigan.gov/ose-eis. Use of the model form will assist in meeting the state complaint requirements in the IDEA. If the complaint does not contain all of the elements required by the IDEA, the complaint is not considered to be properly filed, and the investigation will not begin.

If the state complaint does not contain all of the required elements, the MDE notifies the complainant that the state complaint is not complete, and the complainant is provided with the opportunity to resubmit the complaint with all required information. If the state complaint contains all the required components, the MDE sends a letter to the complainant that informs him or her that the state complaint has been filed and assigns a case manager.

The complainant must mail, fax, or hand deliver the state complaint to both:

- 1) The Michigan Department of Education, Office of Special Education and Early Intervention Services
P.O. Box 30008
Lansing, Michigan 48909
Fax: (517) 373-7504
- 2) The public agency which is the subject of the state complaint.

§300.153(b)(c)(d) states:

(b) The complaint must include:

- (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;
- (2) The facts on which the statement is based;
- (3) The signature and contact information for the complainant; and
- (4) If alleging violations with respect to a specific child—
 - (i) The name and address of the residence of the child;
 - (ii) The name of the school the child is attending;
 - (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
 - (iv) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

(d) The party filing the complaint must also forward a copy of the complaint to the local educational agency (LEA) or public agency serving the child at the same time the party files the complaint with the state educational agency (SEA).



Upon receipt of a state complaint, the MDE will forward a copy of the complaint to the public agency. The MDE will clarify the allegations with the complainant and determine if the allegations are within the jurisdiction of the MDE. If an allegation is not within the jurisdiction of the MDE, the MDE will:

- Notify the complainant in writing that the allegation will not be investigated and explain why.
- If known, refer the complainant to other organization(s) that may provide assistance.

State Complaint Investigation Timelines

The timeline for completing an investigation and issuing a written decision is 60 calendar days. The timeline begins when the written state complaint containing all of the requirements is received by the MDE and the public agency. Using the filing date as the beginning of the timeline, the following occurs:

Resolution Period (Days 1-10)

The MDE may wait 10 days before beginning an investigation. During this period, parties are encouraged to attempt to reach agreement through an informal dispute resolution process. Informal dispute resolution is available at any point prior to the end of the investigation, even after the 10-day resolution period. The MDE may choose to begin the investigation before the end of the 10-day resolution period.

Investigation and Final Report Issued (Days 11-40)

The state complaint investigation proceeds and a final report is issued within 40 calendar days. Informal dispute resolution is no longer available after a final report is issued. The final report includes findings of compliance or non-compliance with an explanation of how the pertinent information and the law support the findings. A corrective action plan, with due dates, is included if non-compliance is found.

The final report is mailed to the complainant if the complainant is the parent. If the complainant is not the parent, he or she will not be issued a copy of the final report without a written release of information from the parent. The final report is also mailed to the public agency and the ISD. The final report is considered a public record.

Request for Reconsideration (Days 41-50)

If either party has **information that was not available during the investigation and the party believes the information** may change one or more of the findings of the final report, the party may submit a written request for reconsideration to the MDE. This request must be received by the MDE within 10 calendar days from receipt of the final report. The MDE will forward a copy of the request for reconsideration to all parties.

Amended Final Report (Days 51-60)

The MDE may grant the request for reconsideration and issue an amended final report. An amended final report must be completed in 60 calendar days from the original date the state complaint was filed or within a permissible timeline extension.

Exceptions to the 60-Calendar Day Timeline

Section 300.152(b)(1) of the IDEA regulations allows timeline extensions when:

- A due process complaint has been filed regarding the same student named in the state complaint.
- The parties have agreed to extend the timeline because they are involved in an alternative dispute resolution process, including mediation.
- Exceptional circumstances exist (e.g., medical emergency, non-availability of school personnel, allegation requires extensive research).

Statement of Compliance With Federal Law

The Michigan Department of Education complies with all Federal laws and regulations prohibiting discrimination and with all requirements and regulations of the U.S. Department of Education.

Compliance With Title IX

What Title IX is: Title IX of the Education Amendments of 1972 is the landmark federal law that bans sex discrimination in schools, whether it is in curricular, extra-curricular or athletic activities.

Title IX states: "No person in the U.S. shall, on the basis of sex be excluded from participation in, or denied the benefits of, or be subject to discrimination under any educational program or activity receiving federal aid."

The Michigan Department of Education (MDE) is in compliance with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq. (Title IX), and its implementing regulation, at 34 C.F.R. Part 106, which prohibits discrimination based on sex. The MDE, as a recipient of federal financial assistance from the United States Department of Education (USED), is subject to the provisions of Title IX. MDE does not discriminate based on gender in employment or in any educational program or activity that it operates.

The designated individual at the Michigan Department of Education for inquiries and complaints regarding Title IX is:

Ms. Norma Tims, Office of Career and Technical Education, Michigan Department of Education, Hannah Building, 608 West Allegan, P.O. Box 30008, Lansing, Michigan 48909, Phone: (517) 241-2091, Email: timsn@michigan.gov.



2009-2010, Volume 8, Issue 2
Packet #17, Article 1

If new allegations are submitted after the state complaint is filed, the new allegations may be:

- Included in the original complaint. If new allegations are added, the timeline may be extended by the MDE.
- Treated as a new complaint and given a full 60-calendar day timeline.

This decision is made by the MDE, based on:

- When the new allegations are added.
- The number of new allegations.
- The issues in the new allegations.

When Corrective Action Is Needed

Corrective action is designed to correct a violation and will vary depending on the violation. Examples of corrective actions include:

- Revising policies or procedures.
- Conducting an evaluation.
- Convening IEP team/Individualized Family Service Plan (IFSP) meetings.
- Staff training.
- A compliance agreement.
- Compensatory education (remedy for denial of services).
- An assurance of future compliance from the district or public agency.

The MDE/ISD is responsible for providing technical assistance to the public agency to ensure future compliance.

The public agency is required to submit proof of compliance when the corrective action is completed. The public agency must submit the proof of compliance within the timeline specified by the MDE and forward a copy of the proof of compliance to the ISD. The MDE will close the case when final proof of compliance is received and found to be acceptable. The MDE will notify the complainant, the public agency, and the ISD that the complaint is closed.

Disagreement With the Final Report/Amended Final Report

In some cases, the complainant or the public agency may appeal a state complaint decision by filing a due process complaint with the MDE, which initiates a due-process hearing. However, not all state complaint issues can be resolved in a due-process hearing.

Any party aggrieved by the MDE decision in the final report/amended final report may file an action with a court of competent jurisdiction. In some cases, the party must have attempted to resolve the matter in a special education due process hearing before filing an action in a court.

Due to the complexity of the special education due process hearing system and court actions, the MDE recommends that parents consult with an attorney when considering what options are available when there is disagreement with the MDE final report/amended final report.

Due Process Complaint/Hearings

- A due process hearing is a formal administrative hearing conducted by an impartial administrative law judge (ALJ) who is an employee of the State Office of Administrative Hearings and Rules (SOAHR).
- A due process hearing is initiated by filing a due-process complaint.
- The complainant and public agency have an opportunity to bring witnesses and cross examine witnesses, to have a record of the proceedings, and to enter and object to evidence.
- Parties can subpoena witnesses, and testimony is under oath.
- Parties have an opportunity to provide testimony by experts.
- The ALJ decision can be appealed to a court of competent jurisdiction (state or federal courts).



- A due-process complaint must be filed within two years of the alleged violation.
- A due-process complaint/request for hearing can be filed for a limited number of issues, which are outlined in §300.507(a)(1) of the IDEA regulations.

If a state complaint and a due-process complaint are filed regarding the same student, the MDE appointed case manager will hold the state complaint in abeyance and notify the ALJ of the state complaint. The ALJ will determine if any allegations in the state complaint are part of a due-process complaint. The case manager will not proceed with the state complaint investigation for those allegations until the due process complaint is resolved or the hearing is concluded.

When the due-process complaint is resolved or the hearing is concluded, the ALJ will notify the case manager of the allegations that were addressed in the due-process complaint/hearing. Allegations in the state complaint that were not resolved in the due-process complaint/hearing will be investigated and resolved in the state complaint process. The 60 calendar-day timeline will not be in effect during the time the due process complaint/hearing is ongoing.

Ideally, disputes can be resolved through an informal process, whether it is through local resolution, an IEP meeting, or mediation. When the parties reach an agreement without requiring a decision from an outside authority, the conclusion to the dispute is generally more satisfying for all involved.

Allegation and Supporting Fact Examples:

Allegation: The school district did not implement my child's IEP/IFSP.

Supporting Facts: My child's November 2008 IEP includes 30 minutes per week of speech-language services, and my son has not seen the speech therapist all year.

Allegation: The school district has refused to provide appropriate reading instruction for my child.

Supporting Facts: My child is in the 4th grade and is still at a beginning reading level. At the last IEP meeting (in January 2009), I asked for more (or a different type) of reading instruction and the district refused.

Allegation: The school district did not complete special education evaluations within 30 school days.

Supporting Facts: I asked for a special education evaluation because my 6th grade son has had a difficult transition to middle school; he is failing his classes and he has been suspended several times. I signed a consent form when I met with the counselor in October 2008. It is now April 2009. I never got the results of the testing, and my son is still having trouble in school.

Allegation: The general education teachers refuse to accommodate my child's disability.

Supporting Facts: My 11th grade daughter has a specific learning disability. The October 2008 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 grade on assignments when she takes extra time to complete them and they won't let her go to the resource room to take tests.





The Center for Educational Networking (CEN) is a statewide education information network that produces and disseminates publications and documents related to the education of students with Individualized Education Programs (IEPs).

RESOURCES

Special Education Compliance, Monitoring, & Due Process
http://michigan.gov/mde/0,1607,7-140-6530_6598_7363---,00.html

Resolving Special Education Disputes
http://michigan.gov/documents/mde/StateComplaintProcedures-April09_274205_7.pdf

Model Complaint Form
http://michigan.gov/documents/mde/MichiganModelStateComplaintForm-April09_274203_7.pdf

Michigan Special Education Mediation Program (MSEMP)
www.cenmi.org/msemp

Consortium for Appropriate Dispute Resolution in Special Education (CADRE)
www.directionservice.org/cadre

Association for Conflict Resolution
www.acresolution.org

This document was printed 16,125 times at a per piece cost of \$0.127.

If you need assistance making this publication accessible for a person with a visual impairment, please contact the Center for Educational Networking (CEN) at (888) 463-7656.

Download copies of *FOCUS on Results* at www.cenmi.org/Documents/FocusOnResults.aspx.

For more information or inquiries about this document, contact the Center for Educational Networking, (888) 463-7656 or info@cenmi.org.



2009-2010, Volume 8, Issue 2
Packet #17, Article 1