



# **Resolving Special Education Disputes**

The Michigan Department of Education (MDE)  
Special Education State Complaint Procedures

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**April 2009**

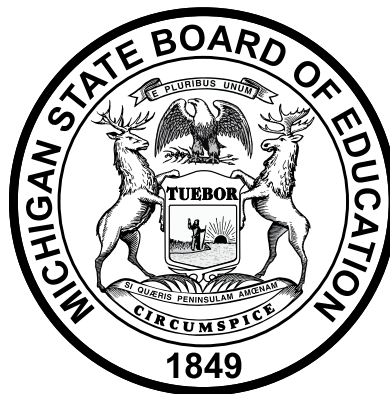


**Michigan Department of Education  
Office of Special Education and Early Intervention Services**



## **RESOLVING SPECIAL EDUCATION DISPUTES**

This document describes the Michigan Department of Education (MDE) dispute resolution options, including informal and formal resolution. The MDE encourages resolution of disputes through alternative dispute resolution processes. This document explains those processes and provides the procedures for filing and investigating state complaints as required by the regulations implementing the *Individuals with Disabilities Education Act* (IDEA) and the *Michigan Administrative Rules for Special Education* (MARSE).



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### **Frequently Used Abbreviations/Acronyms/Symbols**

<b>ESA</b>	Educational Service Agency
<b>FERPA</b>	<i>Family Educational Rights to Privacy Act</i>
<b>IDEA</b>	<i>Individuals with Disabilities Education Act</i>
<b>IEP</b>	Individualized Education Program
<b>IFSP</b>	Individualized Family Service Plan
<b>ISD</b>	Intermediate School District
<b>LEA</b>	Local Educational Agency
<b>MARSE</b>	Michigan Administrative Rules for Special Education
<b>MDE</b>	Michigan Department of Education
<b>OSE-EIS</b>	Office of Special Education and Early Intervention Services
<b>PSA</b>	Public School Academy (includes charter schools)
<b>R</b>	Rule
<b>SEA</b>	State Educational Agency
<b>§</b>	Section

## Part I: Informal Dispute Resolution

### A. What are my options if there are concerns about special education services?

There are a number of ways to address concerns, including, but not limited to:

1. Working with the public agency special education administrator.
2. Holding an IEP team meeting.
3. Holding a facilitated IEP team meeting.
4. Using of the ISD for assistance.
5. Using of informal dispute resolution processes ([www.cenmi.org/msemp](http://www.cenmi.org/msemp)).
6. Filing a state complaint ([www.michigan.gov/ose-eis](http://www.michigan.gov/ose-eis)).
7. Filing a due process complaint/requesting a hearing ([www.michigan.gov/ose-eis](http://www.michigan.gov/ose-eis)).

### B. What are examples of informal dispute resolution processes for resolving special education concerns?

Informal dispute resolution refers to a number of collaborative methods for resolving special education concerns. These methods 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 in lieu of filing a state complaint. They also can be used after filing a state complaint as outlined later in this document. Regardless of whether an informal process is used, the state complaint process is always available.

Examples of informal dispute resolution include, but are not limited to:

- *Local Resolution*—Parties involved may resolve issues directly with each other. They do not have to agree on what happened or why, but may agree on steps to address the concern. This agreement may be documented in writing and signed by the participants.
- *IEP Team Meeting*—Parents or the public agency may request a meeting at any time to address issues of concern.
- *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.
- *Mediation*—Concerns may be addressed through a voluntary process in which a neutral mediator assists the parent and district in discussing the issues, generating options, and negotiating a resolution. The mediator has no authority to impose an outcome. Mediation results in a written agreement signed by the parties, and this agreement is enforceable in court.
- *Public Agency Proposed Corrective Action*.

After a state complaint has been filed it may also be resolved without a formal investigation by a public agency proposed corrective action.

### C. What is Local Resolution?

Local resolution is an opportunity for the complainant and the public agency to directly resolve the issues prompting the complaint. The complainant and public agency staff do not have to agree on what happened or why, but still may agree on steps to address the concerns. The MDE/ISD staff may help the public agency and the complainant reach this agreement. The agreement must be documented in writing and signed by the parties. The agreement could be written in a letter format or as a new IEP or an IEP addendum.

- In order to give the parties an opportunity for local resolution, the MDE may allow 10 calendar days before proceeding with the state complaint investigation. A state complaint investigation may proceed simultaneously with the resolution process.
- If the parties reach an agreement that resolves the complaint, the public agency or complainant will notify the MDE in writing that an agreement has been reached. The MDE will contact all parties to verify that an agreement has been reached and close the complaint.
- If only some of the allegations in the complaint are resolved, the MDE/ISD may investigate the remaining issues, depending on the agreement.
- If the parties do not choose to participate in local resolution, or if the parties do not agree on a solution in 10 calendar days, the MDE/ISD will proceed with the complaint investigation.
- Local resolution is not a required step before initiating mediation.

### D. What is Mediation?

Mediation is a voluntary process. A trained, impartial mediator assists the parties in reaching a mutually acceptable resolution of the concerns or the state complaint. Mediation includes all contacts between the mediator and the parties until either the parties agree to a resolution or the mediation process ends. Discussions during mediation are confidential. The MDE encourages the parties to consider mediation.

- *Cost of 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). The parties may agree to use an outside mediator at public agency expense.
- *Effect on the 60 calendar-day timeline:* If a state complaint has been filed, the 60 calendar-day timeline is suspended during mediation. The timeline resumes upon the MDE receiving notification of an agreement, partial agreement, or no agreement.
- *Procedures used in mediation:* The mediation process must meet the requirements defined by §300.506 of the IDEA Regulations, which states:

(a) General. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process—

- (i) Is voluntary on the part of the parties;
- (ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and
- (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

## Part I: Informal Dispute Resolution *continued*

The mediation may result in the following:

- *Complete agreement:* If mediation results in a written agreement for resolution of the state complaint, either the public agency or complainant provides the MDE with written notice of an agreement. The MDE will contact all parties to verify that an agreement has been reached and close the complaint.
- *Partial agreement:* If only some of the state complaint issues are resolved in mediation, either the public agency or complainant provides the MDE with written notice of the partial agreement. The MDE will contact all parties to verify that the partial agreement has been reached and the MDE/ISD must investigate the remaining issues, if the complainant chooses to proceed.
- *No agreement:* If none of the state complaint issues are resolved in mediation, either the public agency, complainant, or mediator provides the MDE with written notice of no agreement. The MDE/ISD will resume investigating the complaint.

### **E. What is included in a Mediation Agreement?**

Effective mediation agreements include:

- The allegations the agreement covers.
- The actions that were or will be taken.
- When the actions were or will be completed.
- The person(s) responsible for making sure the actions were or will be taken.
- Duration of the agreement.
- The 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 agreement is not being met.
- A statement of confidentiality.
- Signatures of the parties.

### **F. What is Public Agency Proposed Corrective Action?**

When a state complaint has been filed, the public agency may agree that a violation has occurred as alleged by the complainant, and propose a resolution, including a corrective action. In this case, the state complaint investigation would not be conducted.

- The public agency submits a written proposal of corrective action to the MDE/ISD and the complainant which addresses the complainant's proposed resolution.
- The public agency must make available to the complainant, upon the complainant's request, any documentation referred to in the public agency's response:
  - If the complainant is the parent, the parent has access to the student's educational records.
  - If the complainant is not the parent, confidential and easily identifiable information about all students must be removed.
- The MDE/ISD may accept the public agency's proposal for corrective action or determine corrective action based upon both the complainant's and the public agency's recommendations.
- If the MDE rejects the proposed corrective action, the MDE/ISD will proceed with the complaint investigation.

**G. How can an informal dispute resolution be requested?**

For information about dispute resolution, contact:

- The local school district's special education administrator.
- The ISD special education department.
- The Michigan Special Education Mediation Program (MSEMP):  
**web** [www.cenmi.org/msemp](http://www.cenmi.org/msemp), **phone** (800) 8RESOLVE
- The MDE, OSE-EIS: **phone** (517) 373-0923

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

## Part II: Filing a Formal Special Education State Complaint

### A. What is a special education state complaint?

A special education 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 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.

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.

### B. Who may file a state complaint?

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

### C. When must a state complaint be filed?

The state complaint must be received by the MDE and the public agency within one year of the alleged violation.

### D. What must be included in a state complaint?

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. §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 LEA or public agency serving the child at the same time the party files the complaint with the SEA.

### **E. Is there a special form for filing a state complaint?**

You do not have to use a specific form to file a state complaint. However, if the complaint does not contain all of the elements required by the IDEA it is not considered to be properly filed, and the investigation will not begin.

A model state complaint form is included in Appendix B, and is available on the MDE Web site at [www.michigan.gov/ose-eis](http://www.michigan.gov/ose-eis). Use of the model form will assist in meeting the state complaint requirements in the IDEA. Appendix C provides examples of allegations and supporting facts, which must be included in a state complaint.

### **F. How do I file a state complaint?**

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.

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

- 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

### **AND**

- 2) The public agency which is the subject of the state complaint.

## Part III: The State Complaint Process

### A. What happens after the MDE and the public agency receive the state complaint?

Upon receipt of a state complaint, the MDE will immediately contact the public agency to determine if the public agency has received the state complaint.

When the state complaint has been received by the MDE and the public agency, the MDE will:

- Determine if the state complaint contains all the required elements (as listed on pages 8-9).
- 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 organizations that may provide assistance, as listed in Appendix D of this document.

### B. What if the state complaint does not contain the required elements?

If the state complaint does not contain all of the required elements, the MDE will notify the complainant that the state complaint is not complete, and the complainant will be provided the opportunity to submit all required information.

The state complaint is not considered filed, and the timelines do not begin until all the required information has been received by the MDE and the public agency.

### C. What happens when the state complaint contains the required elements?

If the state complaint contains all the required components, the MDE will:

- Send a letter to the complainant that:
  - Informs him or her that the state complaint has been filed.
  - Includes a copy of Part 8 of the *Michigan Administrative Rules for Special Education*, the State Complaint Procedures, and the Procedural Safeguards (upon filing of the first state complaint).
  - Includes information about mediation.
- Assign a case manager.
- Notify the ISD and, in most cases, direct the ISD to assign an investigator. The ISD investigator shall not have administrative authority over programs or services that are the subject of the state complaint.

**D. When and how does the public agency respond to the state complaint?**

The public agency may submit a written response to the allegations in the state complaint. The response must be submitted within ten calendar days from receipt of the state complaint. The public agency must send a copy of its written response to the complainant and the MDE. The public agency's response:

- Must include a statement about the issues in the complaint.
- May include a proposal for resolution of the complaint.
- May include a proposal to mediate.

The public agency must make available to the complainant, upon the complainant's request, any documentation referred to in the public agency's response.

## Part IV: The State Complaint Investigation Process

### A. How long does it take to complete a state complaint investigation?

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 listed on pages 8-9, is received by the MDE and the public agency.

Below is an overview of the state complaint investigation timeline:

Day	1	10	40	50	60
	Resolution Period	Investigation Conducted, Final Report Written, and Final Report Issued	Request for Reconsideration Submitted	Reconsideration of Final Report  Amended Final Report Issued Or Letter Stating "No Change"	
	<b>10 Days</b>	<b>30 Days</b>	<b>10 Days</b>	<b>10 Days</b>	
<b>Resolution may occur at any time prior to the final report.</b>					

Using the filing date as the beginning of the timeline, the following activities occur:

#### Resolution Period

- The first 10 days after the state complaint is filed.
- The parties attempt to resolve the dispute through informal dispute resolution.

#### Investigation and Final Report Issued

- The state complaint investigation will proceed and a final report will be issued within 40 calendar days.

#### Request for Reconsideration

- If either party has information they believe 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

- 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.

### B. Can an investigation take more than 60 days?

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.

## **Part IV: The State Complaint Investigation Process** *continued*

- The parties have agreed to extend the timeline because they are involved in an alternative dispute resolution process, including mediation.
- Exceptional circumstances exist.

### **C. What are examples of exceptional circumstances for extending the 60 calendar-day timeline?**

Examples of exceptional circumstances include:

- The complainant requests additional time because of an “exceptional circumstance” (a medical emergency probably is an exceptional circumstance; a family vacation is not).
- The non-availability of school personnel, including vacations and school closings during the school year (non-availability of staff during the summer vacation is not generally an exceptional circumstance).
- An allegation cannot be resolved solely by reference to existing law, policy, procedure or past practice, and requires significant research.
- A state complaint contains/involves an unusual number of students, school personnel, documents, public agencies, and/or allegations.
- A party has requested information from a court and is awaiting the response.

### **D. What if there are new allegations to add to the state complaint?**

New allegations submitted after the state complaint is filed may be:

- Included in the original complaint. If new allegations are added, the timeline may be extended.
- Treated as a new complaint.

This decision is made by the MDE/ISD, based on:

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

### **E. What happens when a complainant files a due process complaint and a state complaint about the same student?**

If a state complaint and a due process complaint are filed regarding the same student, the case manager will hold the state complaint in abeyance and notify the administrative law judge (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.

## **Part V: The Role of the MDE and the ISD in the Investigation**

### **A. Who conducts the state complaint investigation and writes the final report?**

The MDE and the ISD work collaboratively to conduct the investigation and write the final report. In most cases, the complainant will receive correspondence from and communicate with both the ISD and the MDE.

The MDE may independently initiate and investigate a state complaint if the MDE determines that it is in the best interest of the student to do so.

The MDE/ISD investigates allegations in the state complaint by conducting interviews with the complainant, staff from the public agency, and other individuals who may have relevant information about the student and the allegations.

The MDE/ISD also reviews various documents relevant to the student and the allegations.

### **B. Who will the MDE/ISD interview during the investigation?**

The investigator will contact the complainant and give the complainant the opportunity to submit additional information, verbally and in writing. The investigator will also interview personnel from the public agency and other individuals who may have relevant information about the allegations.

The investigator may conduct interviews by telephone or in person and will ask questions about what happened, when, with whom, and what has happened since the state complaint was filed.

In some cases the investigator may interview the child or observe the child's program. The MDE/ISD will determine if an on-site investigation will be conducted.

### **C. What documents will the investigator review?**

The investigator will review information provided by the public agency and the complainant, such as the student's educational records, IEPs, correspondence, attendance records, report cards, evaluations, and other relevant materials pertaining to the student and the allegations.

The investigator may request information and documents not provided by the complainant or the public agency. The investigator has the legal authority to examine educational records without the permission of the parent [*Family Educational Rights and Privacy Act* (FERPA) of 1974, as amended, and its federal regulations].

All public agencies that are involved in the state complaint must cooperate with the MDE and the ISD in conducting the investigation, including providing documents requested by the MDE/ISD in a timely manner.

**D. How does the MDE/ISD investigate an allegation involving the appropriateness of an eligibility determination, IEP, or placement decision?**

The MDE/ISD will determine if the public agency followed the required procedures and reached a decision that is consistent with the rules and regulations.

The MDE/ISD will find that the public agency complied with the rules and regulations if they followed required procedures, applied required standards, and reached a determination that is reasonably supported by the student's specific data and is consistent with the rules and regulations.

**E. How should I prepare for a state complaint interview?**

It is important that the investigator is able to understand the issues involved in the complaint. In most cases the investigation will be conducted by telephone conversations. The number and length of the conversations will vary, depending on the allegations and issues involved. It is helpful to schedule your interview(s) with the investigator when your conversations will not be interrupted.

It is also helpful to have all relevant documents available to you during the interview including calendars or date books that help you remember when events took place.

## Part VI: The Final Report and Request for Reconsideration

### A. What is a final report?

When the investigation is completed, the ISD complaint investigator, the MDE case manager, and other MDE staff review the findings, make determinations of violation or no violation, and issue a document entitled Final Report.

The final report includes:

- A cover page listing the persons involved in the investigation.
- A statement of authority.
- The date the state complaint was filed (the date that the MDE and the public agency received the state complaint from the complainant).
- A description of any extension of the 60 calendar-day timeline, and the exceptional circumstances that warranted the extension.
- The investigation process.
- A closing statement, including notice of the right for reconsideration.

For each allegation, the final report includes:

- Identification of each allegation.
- The rules/regulations that govern the allegation.
- Information pertinent to the allegation.
- Findings of compliance or non-compliance with an explanation of how the pertinent information and law support the findings.
- A corrective action, with due dates, if non-compliance is found.

The OSE-EIS Program Accountability Supervisor, or designee, reviews and signs the final report.

### B. Who will get a copy of the final report?

The final report is mailed to the complainant if the complainant is the parent. The parent has access to the student's educational records. Confidential information about other students that make the other students easily identifiable will be removed.

If the complainant is not the parent, he/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.

### C. What is a request for reconsideration?

After reviewing the final report, if either party has factual information that was not available during the investigation, and they believe the information will cause a change to the conclusions reached in the investigation, that information may be submitted to the MDE for reconsideration.

- The information must be provided within 10 days of receipt of the final report.
- The MDE will consider the new information and will amend the final report if the information causes a change to the conclusions of the original investigation.
- This review and the amended final report must be completed by the MDE within 10 days in order to conclude the complaint process within 60 days.

## Part VII: Violations and Corrective Action

### A. What corrective action may the MDE order if a violation is found?

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/IFSP meetings.
- Staff training.
- A compliance agreement.
- Compensatory education (remedy for denial of services).
- An assurance of future compliance.

If the violation resulted in a lack of appropriate services for the student, the MDE may order remedies for the denial of services. The MDE may require the public agency to meet with the complainant to develop a specific plan for the student.

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

### B. Will the public agency have to pay a fine?

The MDE does not charge penalties or fines as part of corrective action. However, if a public agency refuses to complete the corrective action, the MDE may apply sanctions, including withholding money from the public agency.

## **Part VIII: Proof of Compliance—Closing a State Complaint**

### **A. How do I know when the public agency has corrected a violation?**

When a final report includes a corrective action for a violation, the public agency shall be required to submit proof of compliance when the corrective action is completed.

The public agency must submit the required proof of compliance under the signatures of the public agency's administrator primarily in charge of special education programs and services, the chief administrative officer, and the president of the board of education.

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.

## Part IX: Options After the Final Report/Amended Final Report

### A. What options are there if I disagree with the final report/amended final report?

In some cases, a parent 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.

### B. What is a due process complaint/hearing and how is it different from a state complaint investigation?

State complaint investigation:

- During the investigation of a state complaint, the MDE/ISD staff may interview the complainant, review documents, and interview public agency personnel to determine whether the district is in compliance.
- This process does not include formal testimony by experts or others, formal records of the proceedings, oaths, subpoenas, or other formal due process protections.
- A state complaint must be filed within one year of the alleged violation.
- A state complaint can be filed alleging a violation of any state or federal special education rule or regulation (refer to page 8-9, regarding definition of a state complaint).

Due process complaint/hearing:

- 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 related to a limited number of issues, which are outlined in §300.507(a)(1) of the IDEA regulations.

**C. Can I file a state complaint and a due process complaint?**

Filing a state complaint does not prevent parents or the public agency from filing a due process complaint requesting a hearing.

If any of the allegations in a state complaint are also the subject of a due process complaint, the state complaint investigation regarding those issues will be held in abeyance until the due process complaint is resolved (see page 13, “What happens when a complainant files a due process complaint and a state complaint about the same student?”).

For more information on due process complaints/hearings, refer to the Procedural Safeguards Notice (March 2008).

**D. Where can additional information about the state complaint investigation process be found?**

The Procedural Safeguards Notice has information about state complaint investigations and other dispute resolution procedures. School districts and public agencies must give parents a copy of the Procedural Safeguards the first time their child is referred for a special education evaluation, once a year while the child is receiving special education services, and at other times required under the IDEA regulations.

Contact the public agency, the ISD, or the MDE if you require a copy of the Procedural Safeguards Notice. The Procedural Safeguards Notice is available in English and other languages at [www.michigan.gov/ose-eis](http://www.michigan.gov/ose-eis). Copies are also available in Braille.

## Appendix A: Glossary

<b>ALJ</b>	Administrative Law Judge
<b>Allegation of Violation</b>	A statement describing how a public agency may have violated state or federal special education rules and regulations.
<b>Case Manager</b>	The consultant from the MDE who is responsible for management of the state complaint investigation. The case manager will also be an investigator.
<b>Complainant</b>	The person or organization filing the state complaint.
<b>Evidence</b>	Documents, objects, pictures, and verbal statements.
<b>FAPE</b>	Free appropriate public education, one of the key parts of the IDEA.
<b>Final Report</b>	The MDE's findings of fact and conclusions, based on the allegations in the complaint; including corrective actions when an allegation has been found valid.
<b>IDEA</b>	The <i>Individuals with Disabilities Education Act</i> .
<b>Investigator</b>	The people assigned to conduct the investigation related to the allegations. The investigator may be an MDE/ISD employee or contractor.
<b>ISD</b>	Intermediate School District.
<b>Mediation</b>	A voluntary process in which an impartial third-party mediator assists and facilitates the parties in reaching a mutually acceptable resolution of the dispute.
<b>MDE</b>	The Michigan Department of Education.
<b>Operating District</b>	The district that operates the program or services on behalf of the resident district or the PSA.
<b>OSEP</b>	Office of Special Education Programs for the U.S. Department of Education.

## Appendix A: Glossary *continued*

<b>Parent</b>	<p>As defined by the MARSE this includes:</p> <ul style="list-style-type: none"><li>• A biological or adoptive parent; a foster parent (unless otherwise prohibited from acting as a parent).</li><li>• A guardian authorized to make general or educational decisions (but not the state if the child is a ward of the state).</li><li>• An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative with whom the child lives).</li><li>• A surrogate parent who has been appointed in accordance with R340.1725f.</li><li>• A person(s) identified by a judicial decree.</li><li>• The student when he/she reaches the age of 18 (if a legal guardian has not been appointed).</li></ul> <p>Refer to R340.1701b(e) for a detailed definition of "parent."</p>
<b>Public Agency</b>	<p>As defined by §300.33 of the IDEA regulations, public agency includes: the SEA, LEAs, ESAs, non-profit public charter schools, and any other political subdivisions of the state that are responsible for providing education to children with disabilities.</p>
<b>Remedy For Denial of Services</b>	<p>As part of a corrective action, the MDE may order compensatory services and/or reimbursement for services paid for by the parent.</p>
<b>Resident District</b>	<p>The district where the student resides or the public school academy (PSA) the student attends.</p>
<b>SEA</b>	<p>The state educational agency. The MDE is the SEA for Michigan.</p>

## Appendix B: Model State Complaint Form



### Filing a Complaint

Michigan Department of Education  
 Office of Special Education and  
 Early Intervention Services  
 608 West Allegan Street  
 Lansing, Michigan 48909  
 Telephone: (517)373-2979  
 Toll Free: (888)320-8384  
 Fax: (517)373-7504

**INSTRUCTIONS:** Complete this form and mail, fax, or hand deliver it to the school district and the Office of Special Education and Early Intervention Services. The use of this form is not required. It is provided to assist in filing a State Complaint.

*COMPLAINANT INFORMATION	
*Name:	*Date:
*Address:	*Telephone Number: (       )
	E-mail address:

STUDENT INFORMATION (if Applicable)			
*Name of Student:	Age:	Date of Birth:	Grade:
*Address of Student (or contact information if student is homeless):	*City:	*Zip Code:	
Name of Parent or Guardian (if other than person filing complaint):	Resident District:		

*SCHOOL INFORMATION	
*Name of School Student Attends:	*Name of District Complaint is Filed Against:

*STATEMENT OF VIOLATION
Provide a statement alleging that the school has violated a requirement of Michigan or Federal law . You are not required to specify what law was violated, but you must explain why you feel the school has not complied. Example: "The teacher is not following my child's IEP." (Attach additional pages as necessary.)

## Appendix B: Model State Complaint Form *continued*

### \*FACTS RELATED TO THE ALLEGATION

Based on your statement of violation, please include the facts relevant to the alleged violation(s). Include all important facts in this description. Example: "On October 24<sup>th</sup>, my child was not allowed extra time on his history exam." (Attach additional pages as necessary.)


### \*PROPOSED RESOLUTION

Briefly explain how you would like the problem to be solved. (Attach additional pages as necessary.)


### MEDIATION

The school district/agency and the complainant are encouraged to attempt resolution through mediation or an informal dispute resolution process. For information about no cost mediation or dispute resolution see the Michigan Department of Education Special Education State Complaint Procedures or contact the Michigan Special Education Mediation Program at (800)8RESOLVE or [www.cenmi.org/msemp](http://www.cenmi.org/msemp).

Are you interested in mediation or informal resolution to resolve the complaint?  Yes  No

Would you like more written information about medication?  Yes  No

Would you like to talk to another parent about mediation?  Yes  No

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
\*Signature

\_\_\_\_\_  
Date

**NOTE: \* indicates required information. Requests received without all required information will NOT be processed. A copy of the complaint must be given to both the Office of Special Education and Early Intervention Services and the district before the State Complaint is considered filed and can be investigated.**

## Appendix C: Examples of Allegations and Supporting Facts

Allegation	Supporting Facts
The school district did not implement my child's IEP/IFSP.	My child's November 2008 IEP includes 30 minutes per week of speech-language services, and my son hasn't seen the speech therapist all year.
The school district has refused to provide appropriate reading instruction for my child.	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.
The school district did not complete special education evaluations within 30 school days.	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.
The general education teachers refuse to accommodate my child's disability.	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.

## Appendix D: Options for Concerns That Are Not An IDEA Special Education Complaint

Type of Concern	Where to Turn/Who to Contact
Discrimination (age, disability, national origin, race, sex, marital status, religion); Harassment, bullying, retaliation.	<p><b>Michigan Department of Civil Rights</b>            Capitol Tower Building            110 W. Michigan Avenue, Suite 800            Lansing, Michigan 48913            Phone: (800) 482-3604            TTY: (877) 878-8464</p> <p style="text-align: center;"><b>or</b></p> <p><b>Office for Civil Rights</b>            U.S. Department of Education            Suite 750            600 Superior Avenue, East            Cleveland, Ohio 44114-2611</p>
Section 504 issues related to identification, evaluation, and provision of a free appropriate public education (FAPE) or educational placement of a child with a disability.	<p>The <b>public agency</b> or Section 504 compliance officer</p> <p style="text-align: center;"><b>or</b></p> <p><b>Michigan Department of Civil Rights</b>            Capitol Tower Building            110 W. Michigan Avenue, Suite 800            Lansing, Michigan 48913            Phone: (800) 482-3604            TTY: (877) 878-8464</p> <p style="text-align: center;"><b>or</b></p> <p><b>Office For Civil Rights</b>            U.S. Department of Education, Suite 750            600 Superior Avenue, East            Cleveland, Ohio 44114-2611</p>
<p>School records' violations:</p> <ul style="list-style-type: none"> <li>• To request an amendment to the child's education records.</li> <li>• A complaint about inaccurate, misleading, or private information in the child's educational records.</li> <li>• Violations of the FERPA.</li> </ul>	<p><b>The public agency</b> (administrator or custodian of student records)</p> <p style="text-align: center;"><b>or</b></p> <p><b>Michigan Department of Education</b>            OSE-EIS (Program Accountability Unit)            P.O. Box 30008            Lansing, Michigan 48909</p> <p style="text-align: center;"><b>or</b></p> <p>The Family Policy Compliance Officer  <b>U.S. Department of Education</b>            Washington, D.C. 20202</p>

**Appendix D: Options for Concerns That Are Not  
An IDEA Special Education Complaint** *continued*

<p>School personnel/teacher or administrator licensure certification.</p>	<p align="center"><b>The public agency administrator(s)</b> <b>or</b> <b>Michigan Department of Education</b> Office of Professional Preparation Services 608 West Allegan P.O. Box 30008 Lansing, Michigan 48909</p>
<p>Assault/Abuse/Neglect.</p>	<p align="center"><b>Local Law Enforcement Agency</b> <b>or</b> <b>Department of Human Services</b> P.O. Box 30037 Lansing, Michigan 48909</p>
<p>Homeless students.</p>	<p align="center"><b>The public agency</b> <b>or</b> <b>Michigan Department of Education</b> Office of School Improvement and Academic Support 608 West Allegan P.O. Box 30008 Lansing, Michigan 48909 (Attn. Homeless Education Consultant) Phone: (517) 241-1162</p>

### Part 8—State Complaints

DEPARTMENT OF EDUCATION  
SUPERINTENDENT OF PUBLIC INSTRUCTION  
SPECIAL EDUCATION PROGRAMS AND SERVICES

These rules take effect immediately upon filing with the Secretary of State unless adopted under sections 33, 34, 45a(6), or 48 of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By the authority conferred on the superintendent of public instruction by sections 1701 and 1703 of 1976 PA 451, MCL 380.1701 and MCL 380.1703, and Executive Reorganization Order Nos. 1996-6 and 1996-7, MCL 388.993 and MCL 388.994)

R 340.1721a, R 340.1721e, R 340.1851, R 340.1852, R 340.1853, and R 340.1854 of the Michigan Administrative Code are amended; and R 340.1855 is added to the Code as follows.

#### PART 8. STATE COMPLAINTS

##### **R 340.1851 Filing a state complaint.**

Rule 151.

- (1) A state complaint, meeting the requirements of 34 CFR § 300.153, shall be filed with the department and a copy forwarded to the public agency that is the subject of the state complaint.
- (2) A state complaint shall be filed with the department within 1 year of the date of the alleged violation.
- (3) A state complaint shall be delivered to the department and the public agency by mail, by fax, or by hand.
- (4) Any person acting on behalf of a complainant shall provide evidence of that authority.

##### **R 340.1852 General responsibilities of public agencies, intermediate school districts, and the department.**

Rule 152.

- (1) All public agencies shall receive allegations of violations of state or federal regulations pertaining to special education. When an allegation is made orally, the recipient public agency may take formal or informal action as necessary to resolve the situation in compliance with applicable provisions of law, but, at a minimum, shall immediately do all of the following:
  - (a) Inform the person making the allegation that he or she has a right to file a written state complaint with the department.
  - (b) Inform the person making the allegation that the filing of a state complaint may be delayed so that mediation or other informal resolution may be attempted. The right to file a state complaint is retained if the informal attempts to resolve the concern in a timely manner are unsuccessful.
  - (c) Provide the person making the allegation with a copy of part 8 of these rules and the department's procedures pertaining to state complaints.
  - (d) Offer to assist the person in filing a state complaint.
- (2) All public agencies shall have procedures to receive state complaints.
- (3) If requested, the intermediate school district shall assist a person in writing a state complaint.

## Appendix E: MARSE *continued*

(4) When a state complaint is filed, the department shall provide the complainant with all of the following:

- (a) A copy of part 8 of these rules.
- (b) A copy of the procedures established by the department pertaining to state complaints.
- (c) A copy of the procedural safeguards notice.
- (d) Information regarding mediation.

### **R 340.1853 Investigation, report, and final decision of a state complaint.**

Rule 153.

(1) The department and the intermediate school district shall investigate state complaints pursuant to part 8 of these rules, procedures established by the department pertaining to state complaints, and the federal regulations implementing the individuals with disabilities education act. The department may independently initiate and investigate a state complaint.

(2) The intermediate school district shall appoint a staff member, or contract with an independent agent, to conduct the investigation with the department. The intermediate school district investigator shall not have administrative authority over programs or services against which a state complaint is filed.

(3) The public agency shall cooperate with the department and the intermediate school district during the conduct of the investigation, including submitting documents requested by the intermediate school district or the department.

(4) The department, during the pendency of the state complaint, shall require any public agency against which the complaint was lodged to maintain the educational status, program placement, and services of an involved student as it was before the complaint if, in the judgment of the department, not doing so constitutes a violation of the student's due process protections.

(5) The department shall issue a final written decision within 60 calendar days after a complaint is filed.

(6) The department may grant an extension of time if exceptional circumstances exist with respect to a particular state complaint. A denial of an extension request is final.

(7) The department shall mail the final written report to the complainant, any public agency subject to the state complaint, and the intermediate school district.

### **R 340.1854 Corrective action and proof of compliance.**

Rule 154.

(1) The public agency shall correct violations as directed by the department.

(2) The intermediate school district shall assist the public agency in monitoring the progress of the corrective action.

(3) The public agency shall submit proof of compliance to the department and the intermediate school district documenting that the violation is corrected within the time line specified in the corrective action.

### **R 340.1855 Failure to comply with corrective action in a timely manner; sanctions.**

Rule 155

(1) If a public agency fails to correct known violations of law in a timely manner, or fails to cooperate with the department or the intermediate school district during the conduct of its investigation, or presents known falsification of fact, or continues repetition of similar violations, the department shall do 1 or more of the following:

- (a) If the public agency in violation is a local school district or a public school academy, then the department shall direct the intermediate school district to provide

## Appendix E: MARSE *continued*

complying programs and services pursuant to section 1702 of 1976 PA 451, MCL 380.1702.

(b) If the public agency in violation is an intermediate school district, the department may withdraw the authority of the intermediate school district to operate a program that is in noncompliance and simultaneously require the public agency of residence to place the affected student or students in an appropriate program.

(c) Withhold federal funds under part B of the individuals with disabilities education act, 20 U.S.C. chapter 33, §1400, et seq.

(d) Apply other penalties under 1976 PA 451, MCL 380.1.

(e) Withhold state funds under 1979 PA 94, MCL 388.1601, or any other governing statute.

(f) Withhold, withdraw, or suspend such endorsements, approvals, credentials, grants, or authorizations pertaining to special education personnel or projects that the department, or its designee, had authority to grant as authorized by, and in accordance with, the procedures required by law.

(g) Seek enforcement of the corrective action in a court of appropriate jurisdiction.