

Resolving Special Education Disputes

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

December 2011

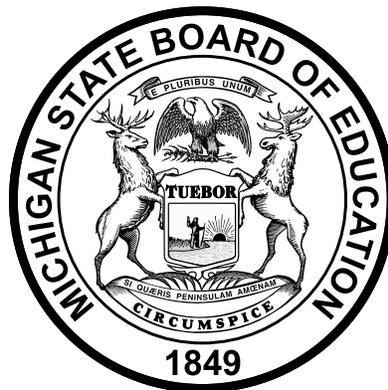


**Michigan Department of Education
Early Intervention Services**



RESOLVING SPECIAL EDUCATION DISPUTES

This document describes the Michigan Department of Education's (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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Part I: Frequently Used Abbreviations/Acronyms/Symbols

ALJ	Administrative Law Judge
ESA	Educational Service Agency
FAPE	Free Appropriate Public Education
FERPA	<i>Family Educational Rights to Privacy Act</i>
IDEA	<i>Individuals with Disabilities Education Act</i>
IEP	Individualized Education Program
IFSP	Individualized Family Service Plan
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).
LEA	Local Educational Agency
MAHS	Michigan Administrative Hearing System; the state agency that conducts administrative hearings including MDE Special Education.
MARSE	<i>Michigan Administrative Rules for Special Education</i>
MDE	Michigan Department of Education
OSE	Office of Special Education
OSEP	Office of Special Education Programs
PSA	Public School Academy (includes charter schools)
R	Rule
RESA	Regional Educational Service Area
RESD	Regional Educational Service District
SEA	State Educational Agency; the MDE is the SEA for Michigan.
§	Section

Part II: 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. Address your concerns with the public agency special education administrator.
2. Hold an Individualized Education Program (IEP) team meeting.
3. Hold a facilitated IEP team meeting.
4. Ask the intermediate school district (ISD) for assistance.
5. Use an informal dispute resolution processes (<http://msemp.cenmi.org>).
6. File a state complaint (www.michigan.gov/ose-eis).
7. File a due process complaint/request a special education administrative hearing (www.michigan.gov/ose-eis).

B. What are examples of informal dispute resolution processes for resolving special education concerns and whom can I contact for more information?

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. Successful 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 and the ISD staff may help the public agency and the complainant reach this agreement. The agreement must be documented in writing and signed by

Part II: Informal Dispute Resolution *continued*

the parties. The agreement could be written in a letter format or as a new IEP or an IEP amendment.

- In order to give the parties an opportunity for local resolution, after a state complaint is filed, 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.
- Local resolution may continue beyond the initial 10 days. If the parties agree to engage in dispute resolution after day 10, the district or the complainant must notify the MDE and the state complaint will be held in abeyance (set aside) until the conclusion of the dispute 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 and the 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 and the 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 state:

(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 II: 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 a signed written notice of an agreement.
- *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 and the 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 and the 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 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 they are not in compliance 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 and the 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 and the 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 and the ISD will proceed with the complaint investigation or direct corrective action.

Part II: Informal Dispute Resolution *continued*

G. How can I get more information about informal dispute resolution?

For information about dispute resolution, contact:

- The public agency's administrator primarily responsible for special education.
- The ISD special education department.
- The Michigan Special Education Mediation Program (MSEMP):
web <http://msemp.cenmi.org>, **phone** (800) 8RESOLVE [(800) 873-7658]
- The MDE, Office of Special Education (OSE): **phone** (517) 373-0923

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

Part III: Filing a Formal Special Education State Complaint

A. What is a special education state complaint?

A special education state complaint is a written and signed allegation that a public agency is not in compliance with:

- 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.

MARSE Rule 340.1701a(c) defines a state complaint as:

(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 of any age or any 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 noncompliance.

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 that 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

Part III: Filing a Special Education State Complaint *continued*

- (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 a specific form required for filing a state complaint?

No, 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 will not be filed, and the investigation process will not begin.

A model state complaint form is included in Appendix B, and is available on the MDE website at 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 considered filed, and the investigation timeline begins after 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 the MDE. The MDE will forward a copy of the complaint to the public agency.

Mail, fax, or hand deliver the state complaint to:

The Michigan Department of Education
Office of Special Education and Early Intervention Services
608 West Allegan Street
P.O. Box 30008
Lansing, Michigan 48909
Fax: (517) 373-8414

Part IV: The State Complaint Process

A. What happens after the MDE receives the state complaint?

Upon receipt of a state complaint:

- The MDE will determine if it contains all the elements required by the IDEA and the MARSE, described in the previous part.
- The MDE does not forward the complaint to the public agency if it does not contain all the required elements.

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:

- Return the complaint to the complainant with a letter notifying the complainant that the state complaint is not complete.
- Provide the complainant with a list of the required elements that are not in the complaint.
- Provide the complainant the opportunity to submit the complaint with all required information.
- Provide the ISD and the public agency a copy of the letter sent to the complainant.

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

When a complaint containing all the required elements has been received by the MDE, a copy of the complaint will be forwarded to the public agency. The state complaint is filed and the 60-day timeline begins the next business day after the MDE and the public agency have received the complaint.

When the complaint is filed, 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.

Part IV: The State Complaint Process *continued*

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

The public agency is not required to respond to a state complaint. However, in accordance with § 300.152 of the IDEA, the MDE provides the public agency with the opportunity to:

- Propose a resolution to resolve the complaint; and
- Voluntarily engage in mediation with the parent, consistent with § 300.506.

The public agency is required to cooperate with the investigation of a state complaint (see Part VI C).

Part V: The State Complaint Investigation Process

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

The timeline for completing a state complaint investigation process is 60 calendar days after the complaint is filed, or an extended timeline based on exceptional circumstances (see page 14).

Below is an overview of the state complaint process:

Day 0	1*	10	40	50	60	
Complaint With All Required Components is Received; Complaint is "Filed"	Timeline Begins 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 Determining No Change	10 Days	10 Days
Resolution may occur at any time during the process. Days 10, 40, and 50 are flexible; the 60-day timeline may be extended based on exceptional circumstances.						

**After the complaint is filed, the MDE overnight mails a copy to the district; the district will receive it the next business day, which is Day 1.*

After the complaint is filed the following activities occur:

Resolution Period

- The first 10 days after the state complaint is filed the parties are encouraged to attempt to resolve the dispute through informal dispute resolution.
- The parties may mutually agree to extend the resolution period and must inform the MDE of their agreement.

Investigation and Final Report Issued

- If resolution has not occurred, an investigation will begin.
- The MDE and ISD will interview the complainant to clarify the allegations and determine if the allegations are within the jurisdiction of the MDE. If an allegation is determined to not be within the jurisdiction of the MDE before a final report is issued, the MDE will:
 - Notify the complainant in writing that the allegation will be dismissed and explain why.
 - If known, refer the complainant to other organizations that may provide assistance, as listed in Appendix D of this document.
- A final report will be issued on or about the 40th day after the complaint was filed.

Part V: The State Complaint Investigation Process *continued*

Request for Reconsideration

After reviewing the final report, if either party has relevant 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, the party may submit the information to the MDE and request reconsideration.

See Part VII C for more information about requests for reconsideration.

Amended Final Report (does not occur in all cases)

- The MDE will review the request for reconsideration and either issue an amended final report or provide notification that the final report stands as written.
- An amended final report must be completed within 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.
- 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 when the 60 calendar-day timeline may be extended?

Examples of when the timeline may be extended include:

- The complainant requests additional time because of an exceptional circumstance.
- The non-availability of school personnel, including vacations and school closings during the school year.
- 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.
- The timeline may be suspended from the date a final report is issued to the date a request for reconsideration is received by the MDE.

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

New allegations submitted after the state complaint is filed may be treated as a new complaint or included in the original complaint.

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

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

If new allegations are added, the timeline may be extended if one of the above examples for timeline extensions exist.

Part V: The State Complaint Investigation Process *continued*

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 MDE will hold the state complaint in abeyance (set it aside) 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 the due process complaint.
- The MDE will not proceed with the state complaint investigation for those allegations resolved in the due process complaint or hearing.
- Allegations in the state complaint that are not addressed in the due process complaint/hearing will be investigated and resolved through the state complaint process.

For information about filing a due process complaint/request for hearing, see *The Special Education Due Process Complaint Procedures* (“The MDE procedures regarding special education administrative due process hearings”).

Part VI: 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 MDE and the ISD.

The MDE may independently initiate or investigate a state complaint and/or additional allegations within a complaint that is being investigated, if the MDE determines that it is in the best interest of the student to do so.

The MDE and the ISD investigate allegations in the state complaint by conducting interviews and reviewing various documents relevant to the student and the allegations.

B. Who will the MDE and the 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 and the 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 and the ISD in a timely manner.

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

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

In determining if the public agency has provided a FAPE, the MDE and the ISD will consider if the public agency:

- complied with the rules and regulations;
- followed required procedures;
- applied required standards;
- reached a determination reasonably supported by the student's specific data; and
- provided special education and related services that are provided in conformity with an IEP that meets the requirements of §§ 300.320 through 300.324.

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

It is important that the investigators are 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 interviews with the investigators when you can set aside time and 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 VII: 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 that the public agency is in compliance or not in compliance with relevant rules and/or regulations 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.
- A description of any extension of the 60 calendar-day timeline, and the exceptional circumstances that warranted the extension.
- Allegations dismissed prior to the investigation.
- Any noncompliance acknowledged by the public agency.
- The investigation process.
- A closing statement, including notice of the right for reconsideration.

For each allegation, the final report includes:

- Identification of the allegation.
- The rules/regulations that govern the allegation.
- Information pertinent to the allegation.
- Findings of the public agency's compliance or noncompliance with an explanation of how the pertinent information and law support the findings.
- Corrective action and required proof of compliance, with due dates, if noncompliance is found.

The OSE 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 and the students' parents if the complaint is about a specific student or students. If the complainant is not the parent, confidential, easily identifiable information about the students will be removed unless there is 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 they have received a copy of the final report, either party may submit a request for reconsideration if:

- There is relevant factual information that was not available during the investigation, and
- The party believes that the information will cause a change to the conclusions reached in the investigation.

The request for reconsideration must be submitted within 10 days of receipt of the final report.

When a Request for Reconsideration is submitted, the MDE reviews the information and determines if:

- The request for reconsideration was received by the MDE within 10 days after the party received a copy of the final report; and
- The supporting information is new and relevant; and,
- The information warrants a change to the original findings in the Final Report.

If the information causes a change to the conclusions of the original investigation, the MDE will issue an Amended Final Report.

- This review and the amended final report must be completed by the MDE within the 60 day timeline or the time allowed based on a permissible timeline extension.
- The timeline may be suspended from the date a final report is issued to the date a request for reconsideration is received by the MDE (see Part V A).

Part VIII: Violations and Corrective Action

A. What corrective action may the MDE order if there is a finding of noncompliance?

Corrective action is designed to correct noncompliance and will vary depending on the facts of the case. Examples of corrective actions include requiring the public agency to:

- Revise policies or procedures.
- Conduct an evaluation.
- Convene IEP team/IFSP meetings.
- Provide staff training.
- Sign a compliance agreement to work with the MDE/ISD to resolve the noncompliance.
- Provide compensatory education (remedy for denial of services).
- Submit an assurance of future compliance.

If the noncompliance resulted in a failure to provide services required in a student's IEP, the MDE may order specific remedies for the denial of services. Or, the MDE may require the public agency to meet with the complainant to develop a specific plan for the student to remedy the denial of services.

The MDE and the ISD are 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 IX: Proof of Compliance—Closing a State Complaint

A. How do I know when the public agency has corrected the noncompliance?

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

Unless directed otherwise by the MDE, the public agency must submit the required proof of compliance with the signatures of:

- The public agency's administrator primarily in charge of special education programs and services (usually the special education director); and
- The chief administrative officer (usually the superintendent); and
- The president of the board of education.

Unless directed otherwise by the MDE, for a public school academy the proof of compliance must be submitted by:

- The public agency's administrator primarily in charge of special education programs and services (usually a principal); and
- The chief administrative officer (an administrator authorized to act on behalf of the authorizing agency); and
- The president of the board.

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 sufficient. The MDE will notify the complainant, the public agency, and the ISD that the MDE received proof of compliance that the corrective actions has been completed and the complaint is closed.

If no corrective action has been directed, the case is closed as of the date of the Final Report (or the Amended Final Report if a request for reconsideration was received that resulted in a change to the Final Report).

Part X: 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.

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.

A 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 the state complaint process?

State complaint process:

- During the investigation of a state complaint, the MDE and the 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 noncompliance of any state or federal special education rule or regulation (see Part III for the definition of a state complaint).

Due process complaint/hearing process:

- A due process hearing is a formal administrative hearing conducted by an impartial administrative law judge (ALJ) who is an employee of the Michigan Administrative Hearing System (MAHS).
- 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 noncompliance.

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 (set aside) until the due process complaint is resolved (see Part V, “What happens when a complainant files a due process complaint and a state complaint about the same student?”).

For more information about 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. 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. Copies are also available in Braille.

Appendix A: Glossary

Allegation	A statement describing how a public agency may have violated state or federal special education rules and regulations.
Case Manager	The consultant from the MDE who is responsible for management of the state complaint investigation. The case manager will also be an investigator.
Complainant	The person or organization filing the due process complaint.
Evidence	Documents, objects, pictures, and verbal statements.
Final Report	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.
Investigators	The people assigned to conduct the investigation related to the allegations. The investigator may be an MDE staff member and the ISD employee or contractor.
Mediation	A voluntary process in which an impartial third-party mediator assists and facilitates the parties in reaching a mutually acceptable resolution of the dispute.
Operating District	The district that operates the program or services on behalf of the resident district or the public school academy (PSA).
Parent	Refer to MARSE rule R 340.1701b(e) for a detailed definition of "parent." As defined by the MARSE, "parent" includes: <ul style="list-style-type: none">• A biological or adoptive parent; a foster parent (unless otherwise prohibited from acting as a parent).• A guardian (including a grandparent, stepparent, or other relative with whom the child lives) authorized to make general or educational decisions (but not the state if the child is a ward of the state).• A surrogate parent who has been appointed in accordance with R 340.1725f.• A person(s) identified by a judicial decree.• The student when he or she reaches the age of 18 (if a legal guardian has not been appointed).

Refer to R 340.1701b(e) for a detailed definition of "parent."

Appendix A: Glossary *continued*

Public Agency	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.
Remedy for Denial of Services	As part of a corrective action/ALJ order that may order compensatory services and/or reimbursement for services paid for by the parent.
Resident District	The district where the student resides or the public school academy (PSA) the student attends.

Appendix B: Model State Complaint Form



Michigan Department of Education
Office of Special Education
608 West Allegan Street
Lansing, Michigan 48909
Telephone: (517) 373-2979
Toll Free: (888) 320-8384
Fax: (517) 373-8414

Model Special Education State Complaint Form

PURPOSE: This model form may be used to submit a state complaint, alleging that a district has violated a requirement of Part B of the *Individuals with Disabilities Education Act* (IDEA) or the *Michigan Administrative Rules for Special Education* (MARSE).

INSTRUCTIONS: Complete this form and mail, fax, or hand-deliver it to the Michigan Department of Education (MDE), Office of Special Education (OSE) at the address above. The OSE will forward a copy of the complaint to the district when it is filed. The use of this form is not required; it is provided to assist in filing a state complaint.

Note: The * indicates required information. This information must be provided whether you use this form or any other format. Complaints that do not have all required information will NOT be filed and will be returned to the complainant.

COMPLAINANT CONTACT INFORMATION			
*Name:			
*Address:	Telephone Number(s):		
	Email address:		
STUDENT INFORMATION (if alleging a violation regarding a specific child)			
*Name of Student:	Age:	Date of Birth:	Grade:
*Address of Student (or contact information if student is homeless):			
Name of Parent or Guardian (if other than the person filing the complaint):	Resident District:		
SCHOOL INFORMATION			
*Name of the School the Student Attends:	Name of the District(s) the Complaint is Filed Against:		

Appendix B: Model State Complaint Form *continued*

***ALLEGATION OF NONCOMPLIANCE**

Provide a statement alleging how the district is not in compliance with a requirement of Michigan or Federal special education rules or regulations. You do not have to specify what law, but you must explain why you feel the school has not complied. Example: "The teacher is not following my child's IEP, he is not getting accommodations." You can submit more than one allegation of noncompliance on the same complaint form. (Attach additional pages if necessary.)

***FACTS RELATED TO THE ALLEGATION**

Based on the Allegation of Noncompliance, include the facts that are relevant to each allegation. Include all important facts in this description. Example: "My son's IEP says he gets extra time to take tests. On October 24, he was not allowed extra time on his history exam." (Attach additional pages if necessary.)

***PROPOSED RESOLUTION**

Briefly explain how you think the issue should be resolved. (Attach additional pages if necessary.)

Printed Name

*Signature

Date

Appendix B: Model State Complaint Form *continued*

MEDIATION

The Michigan Department of Education (MDE) encourages parents and districts to resolve disputes through informal dispute resolution processes, including mediation.

Mediation is a voluntary process. A trained, impartial mediator assists the parties in reaching a mutually acceptable resolution of the dispute between the parties. Mediators are not affiliated with any local school district nor do they represent any of the parties in a complaint. Discussions during mediation are confidential.

The MDE provides mediation services at no cost to the complainant or the district if they use the Michigan Special Education Mediation Program (MSEMP). The MSEMP is funded by an MDE grant.

If you are interested in resolving a complaint through mediation or informal resolution the MDE will, with your consent, forward your name and telephone number to the MSEMP. The MSEMP will contact you to tell you more about mediation and other alternative dispute resolution options. If you choose to participate in mediation the MSEMP will contact the district to determine if the district agrees to participate in mediation. If so, the MSEMP will make the arrangements and schedule the mediation meeting(s).

If you and the district agree to participate in mediation after a state complaint has been filed, the complaint will be set aside until the mediation process is completed. If the issue is resolved through mediation, the complaint will be withdrawn or dismissed. If the issue is not resolved the MDE will proceed with the complaint investigation.

For more information about mediation and informal dispute resolution see the MDE Special Education State Complaint Procedures or contact the Michigan Special Education Mediation Program (MSEMP) at (800) 8RESOLVE or <http://msemp.cenmi.org>.

Please provide the information below and sign your name if you want the MSEMP to contact you to tell you more about mediation and other informal dispute resolution options.

I am interested in resolving the complaint against the _____ school district/public school academy through mediation or informal resolution.

I give the MDE permission to forward my name and telephone number to the MSEMP.

Name: _____ Telephone number: _____

Signature

Date

.....
FOR MDE USE ONLY: Case # _____ Date Filed _____ Case Manager _____

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 IEP includes 30 minutes per week of speech-language services, and my son hasn't seen the speech therapist all year.
The school has suspended my son and did not do a manifestation determination review (MDR). He is not getting any services.	My son has been suspended three times this year, for a total of 21 days. I told the principal that my son'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 son any services while he was suspended.
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 and it is now April. 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 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>Michigan Department of Civil Rights 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;">or</p> <p>Office for Civil Rights U.S. Department of Education 600 Superior Avenue, East, Suite 750 Cleveland, Ohio 44114 Phone: (216) 522-4970</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 public agency or Section 504 compliance officer</p> <p style="text-align: center;">or</p> <p>Michigan Department of Civil Rights 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;">or</p> <p>Office For Civil Rights U.S. Department of Education 600 Superior Avenue, East, Suite 750 Cleveland, Ohio 44114 Phone: (216) 522-4970</p>
<p>School records' violations:</p> <ul style="list-style-type: none"> • To request an amendment to the child's education records. • A complaint about inaccurate, misleading, or private information in the child's educational records. • Violations of the FERPA. 	<p>The public agency (administrator or custodian of student records)</p> <p style="text-align: center;">or</p> <p>The Michigan Department of Education OSE (Program Accountability Unit) P.O. Box 30008 Lansing, Michigan 48909</p> <p style="text-align: center;">or</p> <p>The Family Policy Compliance Officer U.S. Department of Education 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">The public agency administrator(s) or The Michigan Department of Education Office of Professional Preparation Services 608 West Allegan P.O. Box 30008 Lansing, Michigan 48909</p>
<p>Assault/Abuse/Neglect.</p>	<p align="center">Local Law Enforcement Agency or Department of Human Services P.O. Box 30037 Lansing, Michigan 48909</p>
<p>Homeless students.</p>	<p align="center">The public agency or The Michigan Department of Education 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>
<p>Mediation and alternative dispute resolution services.</p>	<p align="center">Michigan Special Education Mediation Program (MSEMP) 229 North Pine Street Lansing, MI 48933 Phone: (800) 8RESOLVE</p>
<p>Information and parent support services.</p>	<p align="center">Michigan Protection and Advocacy Services 4095 Legacy Parkway, Suite 500 Lansing, MI 48911 Phone: (800) 288-5923</p> <p align="center">or</p> <p align="center">Michigan Alliance for Families 1325 South Washington Avenue Lansing, MI 48910 Phone: (800) 552-4821</p>

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

<p>Attorney referrals.</p>	<p>Michigan Protection and Advocacy Services 4095 Legacy Parkway, Suite 500 Lansing, MI 48911 Phone: (800) 288-5923</p> <p>Note: Due to funding constraints, Michigan Protection and Advocacy (MP&A) can only provide legal services in a limited number of cases.</p> <p>However, MP&A maintains a referral list of attorneys for hire that are experienced in special education matters.</p>
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Appendix E: Michigan's Administrative Rules for Special Education (MARSE)

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.