

Due Process Complaint and Hearing

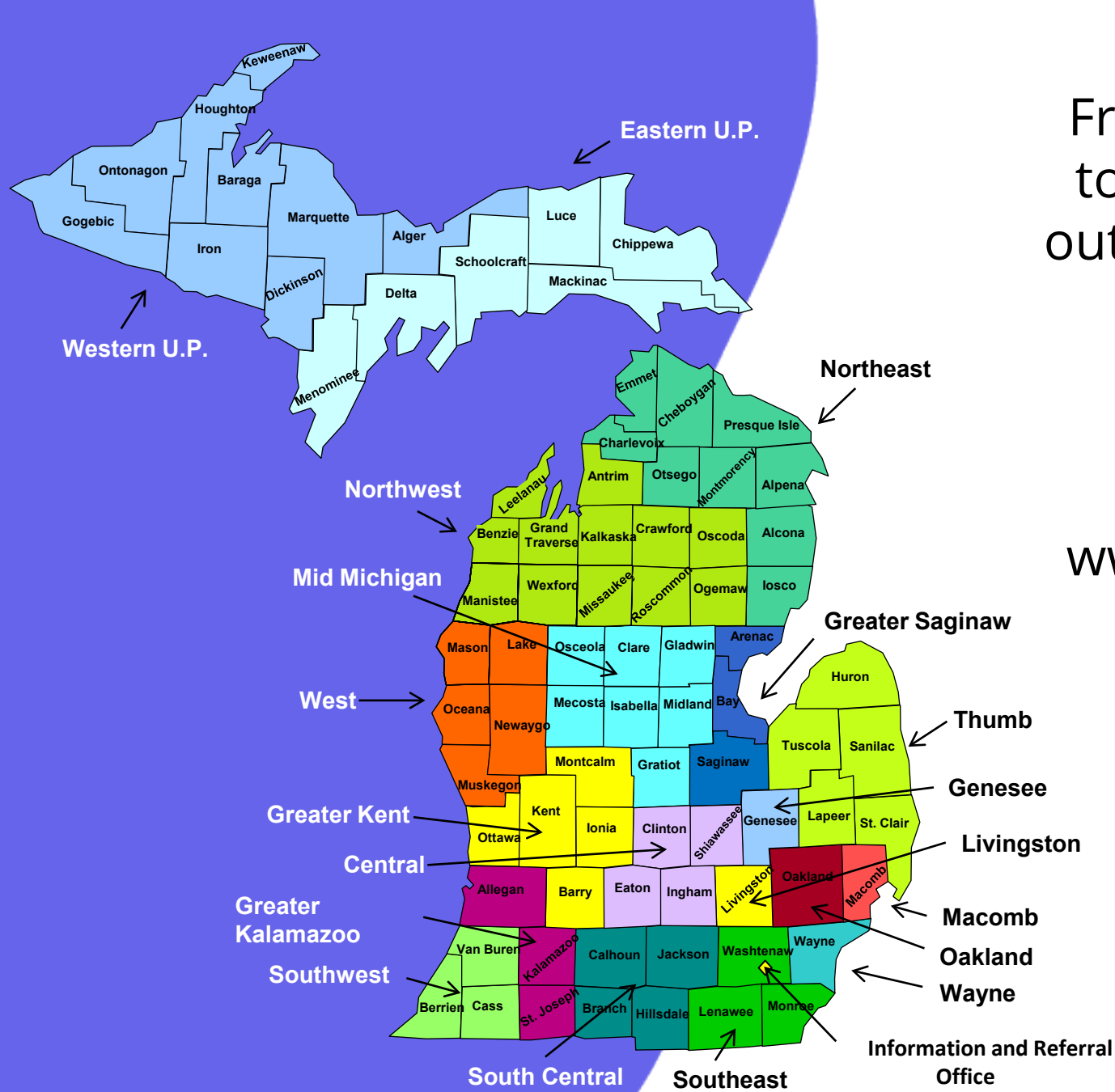
Michelle Driscoll, Policy Coordinator



Due Process Complaint and Hearing

Michelle Driscoll, Policy Coordinator





Free parent training and information
to improve educational services and
outcomes for students with disabilities

800-552-4821

www.michiganallianceforfamilies.org



Acronyms, Abbreviations, Symbols, and Terms

ALJ	Administrative Law Judge
CFR	Code of Federal Regulations
FAPE	Free Appropriate Public Education
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
ISD	Intermediate School District; also called a regional educational service agency (RESA)
LEA	Local Educational Agency
MDE–OSE	Michigan Department of Education - Office of Special Education
MDR	Manifestation Determination Review
MOAHR	Michigan Office of Administrative Hearings and Rules
MARSE	Michigan Administrative Rules for Special Education
Parent	<p>The IDEA defines a parent as:</p> <ul style="list-style-type: none">A biological or adoptive parent;A guardian authorized to make general or educational decisions (but not the state if the child is a ward of the state).An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfareA surrogate parent who has been appointed by the student's educational agencyA person appointed by a judge's order <p>***A student has the same rights as a parent when he or she reaches the age of 18 (if a legal guardian has not been appointed).</p>
Public Agency	State Educational Agency, LEA's, ESA's, non-profit public charter schools, any other state agency providing education to students with disabilities
R	Rule (MARSE)
§	Section (IDEA)

Overview

Governance and Guidance

- Federal regulations
- State rules

Options for Resolving Special Education Disputes

Due Process Complaint and Due Process Hearing

- Process, Procedures and Timelines (general and expedited)
- Who, What, When, Where, How

Guidance Documents and Resources



Governance and Guidance

Individuals with Disabilities Education Act (IDEA)

- 34 CFR §300.507-300.518 and §300.530-300.536

Michigan Administrative Rules for Special Education (MARSE)

- R340.1724f
- R340.1725e

Michigan Department of Education-Office of Special Education (MDE-OSE)

- Special Education Due Process Complaint Procedures (June 2022)
- Due Process Complaints (February 2022)
 - Process description, timelines, due process procedures flowchart

Options For Resolving Special Education Disputes

Informal Meeting

Facilitated Meeting

Mediation

State Complaint

Due Process Complaint/Hearing

Informal Complaint Resolution

Federal regulations and state rules encourage informal resolution of disputes

- ✓ Parents and school/district staff meet and talk to try and resolve the issue
- ✓ Review, revise, amend the IEP
- ✓ Written agreements between district and parent
- ✓ Mediation services (no cost to parent or district)

Benefits of Informal Resolution

- ✓ Parents and school/district have control of the process and outcomes
- ✓ Disagreements can be resolved more quickly
- ✓ Preserve positive, collaborative relationship between school and parent
- ✓ Less costly (time, resources and money)

Facilitated Meeting

- Neutral Facilitator
- Any special education meeting
(IEP, Manifestation Determination Review, etc.)
- Voluntary process - parent and school must agree to participate
- Facilitator coordinates discussion
- No cost to parent or school district

When to use Facilitation

- Participants uneasy about a meeting
- Parent, school relations strained
- Participants need to focus on student issues

Role of the Facilitator



A Facilitator will:

- Create an agenda based on input from the parties
- Stay neutral
- Facilitate the meeting process, if asked to.
- Keep meeting centered on student needs
- Help negotiate disagreements
- Keep meeting on track and on time
- Makes sure everyone adheres to ground rules

A Facilitator will not:

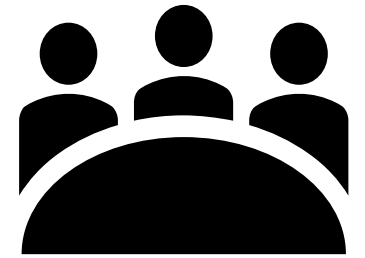
- Be a part of the team
- Give legal advice
- Advocate for a position
- Make decisions

Mediation 34 CFR §300.506

- Collaborative approach to resolve special education issues
- Does not delay a parent's right to a due process hearing
- Voluntary process-parents and school must agree to mediation
- Mediator is trained in mediation techniques and special education law
- Conversations are confidential, can't be used in other court proceedings
- Agreement is a legally enforceable document
- No cost to parent or school district

Mediation can be used for...

- Any dispute (eligibility for programs/services, Transition issues, placement)
- Communication, relationship issues
- Parties can resolve the issue(s) informally at any time before the hearing, even after the resolution period or mediation has ended



Role of the Mediator

A Mediator will

- Remain neutral
- Conduct the mediation
- Ensure all participants have equal opportunity to express their thoughts
- Make sure everyone abides by the rules for appropriate conduct
- Help parties remain on topic
- Take notes
- Guides parties through mediation process, assisting with negotiation to resolve differences and work toward creating an agreement
- Record the agreement

A Mediator will not

- Make decisions
- Give legal advice
- Take sides



State Complaint 34 CFR § 300.153, R 340.1850 – R 340.1855

A state complaint is a written, signed statement that alleges a public agency violated

- ✓ state or federal special education rules or regulations related to special education programs and services (MARSE or IDEA)
- ✓ Intermediate School District (ISD) plan
- ✓ Michigan Revised School Code (as related to special education)
- ✓ state application for federal funds

Failed to implement

- ✓ Administrative Law Judge decision

Must be filed within one year of when alleged violation occurred

Can be filed by anyone (person or organization)

Special Education Mediation Services (SEMS) Requesting **FREE** Services



Call 833-KIDS-1ST (833-453-7178)
Mikids1st.org (fill out Request for Services form)



Intake Process



SEMS contacts parties, arranges schedules,
and processes paperwork



Parties Meet

What is a Due Process Complaint?

34 CFR §300.507(a)(1) and 34 CFR §300.532

Initiated by a parent or “public agency” on matters described in IDEA §§ 300.503(a)(1) and (2) relating to violations of IDEA or MARSE

- ✓ Identification
- ✓ Evaluation
- ✓ Educational placement of a student with a disability
- ✓ The provision of a free appropriate public education (FAPE) to a student with a disability
- ✓ Appeal of the district’s Manifestation Determination Review (MDR) decision

Due Process Complaints Are Not For...

Issue	Addressed by
Individual staff issues School Policies	<ul style="list-style-type: none">✓ School/District Administrator✓ School Board
Discrimination Section 504 Plans	<ul style="list-style-type: none">✓ Office of Civil Rights (OCR)
Confidentiality Student records	<ul style="list-style-type: none">✓ Student Privacy Office- US Department of Education✓ Family Educational Rights and Privacy Act (FERPA)
Abuse Neglect	<ul style="list-style-type: none">✓ Local law enforcement agency✓ Department of Health and Human Service (DHHS) – Child Protective Services

Filing a Due Process Complaint 34 CFR §300.507 and 34 CFR §300.508

The complaint must contain:

- The student's name
- The address of the residence of the student
- The name of the school the student is attending
(In the case of a homeless student or youth; available contact information for the student and the name of the school the student is attending)
- A description of the nature of the problem
- A proposed resolution
- Signature of the person filing the complaint (Complainant)



Where to send the due process complaint

A due process complaint must be delivered by hand, mail, or electronically (fax or email)

Michigan Department of Education
Office of Special Education
608 West Allegan Street
Lansing, Michigan 48909
Fax: 517-241-7141

Email: MDE-MIComplaints@michigan.gov

Timelines for filing a standard due process complaint

When must a due process complaint be filed?

- Within 2 years after alleged violation
- Some exceptions to the timeline
 - The school district specifically misrepresented that it had resolved the issues identified in the complaint
 - The school district withheld information from you that it was required to provide you under IDEA



When must the other party respond to a due process complaint?

- 10 **calendar** days after the Due Process Complaint is received

The Process – Things to Know

Not required to use Model Form. Ensure minimum information is submitted.

If the complaint does not contain the minimal information, parent or parent's attorney will be contacted to provide the missing information. Timeline starts over.

MDE provides a copy of the complaint to the parent, district and intermediate school district by mail or electronically.

MDE forwards the complaint to the Michigan Office of Administrative Hearings and Rules (MOAHR).

The complaint is reviewed by an Administrative Law Judge (ALJ) who decides if the complaint is sufficient and properly filed.

Next steps following the filing of a due process complaint leading up to a due process hearing include:

- Resolution meeting
- Mediation
- Pre-Conference Hearing, if appropriate

Dismissing and Amended Due Process Complaints



The ALJ can dismiss a due process due complaint due to:

Lack of jurisdiction-no authority to hear a case
(subject matter is not related to IDEA or MARSE)

Alleged violation occurred more than 2 years ago

Lack of standing (if person who initiated the
complaint is not a parent/guardian)

Reasons of sufficiency

- allegations not specific or understandable
- complaint does not have the required content or is not signed



Amended Complaint

ALJ may allow complainant to file an
amended due process complaint

Timelines start over

Resolution Meeting 34 CFR §300.510

- The Resolution meeting is held prior to the due process hearing
- Opportunity for parent and school district to discuss the complaint, attempt to reach an early resolution of the dispute without going to a hearing
- Held within 15 **calendar** days of the district receiving the parent's due process complaint, completed within 30 **calendar** days (standard due process complaint)
- Includes relevant members of the IEP team and a representative of the school district who has decision making authority
- School district cannot have an attorney present unless parent is accompanied by an attorney
- Resolution meeting is always required, except when parent and school district agree in writing to waive the resolution meeting and
 - move forward with the hearing process **OR**
 - to use mediation
- Not required if due process complaint is initiated by the district
- School district contacts parent to schedule the Resolution Meeting

What is a Due Process Hearing 34 CFR §300.507, §300.512, R 340.1724f

A special education **administrative** hearing, governed by IDEA and MARSE

- Identification
- Evaluation
- Educational placement of a student with a disability
- The provision of a free appropriate public education (FAPE) to a student with a disability
- Appeal of the district's Manifestation Determination Review (MDR) decision

Who is involved in a due process hearing?

Who is involved?

- Michigan Office of Administrative Hearings and Rules (MOAHR)
- Administrative Law Judge (ALJ)
- Parents
- Attorneys
- District administrators and staff
- Witnesses
- Expert witnesses



Who conducts the hearing and decides the case?

- Administrative Law Judge (ALJ) appointed by the MOAHR

Where is a due process hearing held?

- Hearing usually conducted in a building in the district, unless otherwise agreed to by both parties

Administrative Law Judge (ALJ) – Duties and Authority R340.1725e

- ✓ **Administer oaths**
- ✓ **Sign and issue subpoenas**
- ✓ **Provide for taking of testimony**
- ✓ **Require a pre-conference hearing (if appropriate) to:**
 - ✓ Determine the areas of dispute and go over the issues
 - ✓ Ensure that the matters of dispute are clearly defined
 - ✓ Schedule dates for the due process hearing
 - ✓ Schedule timelines for providing written arguments (briefs)
 - ✓ Schedule timelines for the exchange of proposed written documents/evidence
- ✓ **Control the conduct of the participants in the hearing**
- ✓ **Grant specific extensions of time**
- ✓ **Issue a Final Decision and Order**

What Happens in a Due Process Hearing? 34 CFR § 300.512

Standard Due Process Hearing or Expedited Due Process Hearing

- Witnesses testify under oath
- Witnesses can be cross examined
- Evidence and exhibits submitted
- Objections to testimony and/or evidence and/or documents is allowed
- Opening and closing arguments
- Hearing is recorded
- School district is represented by an attorney, parent can be represented by attorney (not required)
- Hearing can take a couple of hours, days, weeks or months



When must the due process hearing be completed, and Decision and Order mailed?

- 45 **calendar** days after the 30-day resolution period ends
- Unless the ALJ grants an extension (at request of either party)

ALJ Final Decision & Order 34 CFR §300.513

The ALJ issues the Final Decision and Order after the hearing

The Final Decision and Order may contain:

- **Procedural History** (date filed, dates of correspondence, hearing dates)
- **Witness List** (Individuals who testified at hearing)
- **Exhibit List** (student transcripts, student attendance records, IEPs)
- **Issues** (issue in dispute between parent and district that ALJ is addressed in hearing)
- **Applicable Law** (identify relevant IDEA regulations and MARSE rules)
- **Findings of Fact** (facts based on information presented - documents, testimony and admitted exhibits)
- **Conclusions of Law** (applying regulations, rules, and case law to the particular facts of case. Provides a Summary of Conclusions)
- **Order** (decision based on the above information)
- **Information about how to appeal the decision**

What happens after the Decision and Order?

- If district prevails, there is no further administrative action
- If parent prevails, Decision and Order contains list of things the district must do (corrective action). For example,
 - ✓ Change placement
 - ✓ Change eligibility
 - ✓ Conduct new IEP
 - ✓ Provide additional services
 - ✓ Provide compensatory services for the student
- MDE-OSE monitors the completion of the Order

Appealing the Due Process Hearing Decision 34 CFR §300.514

- Appeal of due process hearing decision is to a **civil court**
- Appeal of Decision and Order must be done within 90 days
- Not an administrative process
- District and/or parent can appeal
- Special education issues related to IDEA have to go through the due process hearing before going to civil court
- Civil court process can take 1-3 years or more to work through levels of appeal: Federal District Court to Federal Court of Appeals



Expedited Due Process Hearing

34 CFR §300.532(c)

Used to appeal a district's Manifestation Determination Review decision (discipline and placement)

- ✓ only provision in IDEA for an expedited due process hearing

Process is the same as a standard due process hearing

Complaint must clearly state that an **expedited due process complaint** is being filed

Can request an expedited due process hearing, ALJ will decide if it is expedited or not


Timelines are different:

- ✓ Resolution period must start within 7 **calendar** days of the expedited due process complaint being received, must be completed within 15 **calendar** days
- ✓ Hearing must be completed within 20 **school** days
- ✓ Decision and Order must be mailed within 10 **school** days after hearing ends
- ✓ Resolution period, hearing, and decision timelines cannot be extended

Quick Guide to Special Education Dispute Resolution Processes

This is a comparison chart of the dispute resolution processes that explains:

- How the Processes Differ
- What issues and When Used
- Who initiates
- Outcome or Desired Result
- Process Distinctions
- Benefits
- Considerations
- Decision Maker
- Role of Third Party
- Time Frame
- Financial Cost/Who Pays
- Impact on Relationships
- How to Prepare

<div> Quick Guide to Special Education Dispute Resolution Processes for Parents of Children & Youth (Ages 3-21)</div> <div><small>This guide is not intended to interpret, modify, or replace any IDEA Part B procedural safeguards or requirements of federal or state law. State regulations associated with these processes vary widely. Parents are encouraged to contact their state educational agency or parent center for more information.</small></div>						
Processes	IEP Facilitation	Mediation	Resolution Meeting	Written State Complaint	Due Process Complaint/Hearing Request	Expedited Hearing Request & Resolution Meeting
How the Processes Differ	An optional process that is not required by the IDEA, availability varies by state.	A voluntary process that brings people together with a mediator, who helps them communicate with each other and resolve their disagreements.	A meeting that takes place after a parent files a due process complaint/hearing request but before a due process hearing takes place.	A written document used to communicate that a public agency (e.g., school district) has not followed the IDEA, and to request an investigation.	A process used to resolve a formal complaint made to a parent or public agency (e.g., school district), who are together referred to as "the parties."	A special type of due process complaint/hearing request available only in certain situations that relate to a student's discipline and placement.
What Issues & When Used	Used when a parent and school district are unable to agree on important issues related to a child's IEP, or when a meeting is expected to address complex issues or be contentious.	Available anytime there is a disagreement between parents and education about special education and/or related services.	Used to resolve issues listed in a due process complaint/hearing request. The meeting must occur within the parent and school district agree in writing not to have the meeting, or to use the mediation process instead.	Available anytime there is a concern about a particular child or an issue that affects children system-wide.	Used to resolve disagreements relating to the identification, evaluation, educational placement or provision of a free, appropriate public education (FAPE) to a child who needs or is suspected of needing special education and related services.	Used often parents disagree with a school district's discipline-related decision that affects their child's placement, or whether the child's behavior is related to his or her disability.
Who Initiates	A parent or school district may request IEP facilitation. A state educational agency may also recommend this as an alternative to a more formal process.	A parent or school district may request mediation. A state educational agency may also recommend this, as an alternative to a more formal process.	The school district must hold a resolution meeting within 15 calendar days of receiving notice of a parent's due process complaint/hearing request.	Any person or organization may file a written state complaint.	A parent or school district may file a due process complaint/hearing request.	A school district may use this process if it believes that a child's behavior could be dangerous to the child or others.
Outcome or Desired Result	An IEP that is supported by the team members and benefits the child.	A signed, legally enforceable, written agreement.	A signed, legally enforceable, written agreement that resolves issues listed in the due process complaint/hearing request.	A written decision that includes findings and conclusions, and sets orders for the final decision. Must also include actions required to address the needs of the child or children related to the complaint.	A written decision with findings of fact and conclusions of law, which may order specific activities to be carried out.	A written decision with findings of fact and conclusions of law, which may order the child to be provided with a specific educational placement.
Process Distinctions	IEP facilitation is an early dispute resolution option that is not required by the IDEA. IEP facilitation allows all members of the team the chance to participate fully, since the facilitator serves as the meeting leader.	Mediation discussions are confidential. Mediation is a flexible process – participants may influence the process, and ultimately determine the outcome.	Resolution meetings only occur after a due process complaint/hearing request is filed. The resolution meeting occurs unless the parent and school district both agree in writing not to have the meeting, or to go to mediation instead.	This is the only dispute resolution option open to any person or organization, including those unrelated to the child. The final decision may include corrective actions that are child-specific or relate to system-wide issues.	A formal record of the hearing is written or electronic transcript must be made and provided to the parent. The decision is appealable in state or federal court.	See Due Process Complaint/Hearing Request
Benefits	May build and improve relationships among IEP team members. Sometimes, team members feel better heard when a facilitator is involved. Can help resolve disagreements more quickly than other options. Keeps decision-making with team members who know the child best. The IEP team may work together more effectively and efficiently.	Discussions are confidential – what is said in mediation can't be used as evidence in a due process hearing or civil lawsuit. A more flexible, less adversarial alternative to other dispute resolution options, the due process complaint/hearing request. Sometimes, participants work with the mediator to design the process, in some cases, they may be allowed to select the mediator together. Can help resolve disagreements more quickly than other options.	Provides a chance for the parent and school district to work together to resolve issues prior to a due process hearing. Keeps decision-making with the parent and school district who know the child. The school district may only bring an attorney to the resolution meeting if the parent chooses to bring an attorney. The parent or school district may cancel a resolution agreement within 3 business days of the agreement being signed.	A written decision must be issued no later than 60 calendar days after the complaint was received, unless the timeline is extended. A written state complaint is relatively easy to file.	From the date that the complaint is filed until the decision is final, your child stays in his or her current educational placement, unless you and the school district agree otherwise – this is called "pendency" or "stay-put." The decision is legally binding on the parties. The state educational agency is responsible for ensuring the decision is followed, unless it is appealed.	This process is intended to quickly address decisions concerning a student's discipline and placement.
Considerations	Parents and the school district must agree to use IEP facilitation. For the process to be successful, everyone at the meeting needs to respect the role of the facilitator and be willing to participate. The facilitator typically does not address	Whether there is resolution of the issues, or an agreement is created, depends upon the participants.	Discussions are confidential and are not confidential, and you cannot be required to sign a confidentiality agreement or participate in the meeting. Parents and the school district may choose to sign a confidentiality agreement or include it in a resolution agreement.	The person or organization filing the complaint must provide facts to support the problems listed in their complaint. This process does not require those involved to try resolving the dispute collaboratively. Mediation remains available anytime.	The decision is made by a hearing officer or administrative law judge who is not involved in the child's education. The decision is legally binding, even if you disagree with the outcome. If a decision is appealed, it may not be	The expedited hearing timeline is based on 30 school days, and the resolution meeting period is based on 30 school days. It is important to keep timeline differences in mind, especially during or close to times when school is not in session, such as vacations and extended breaks.

This is a multi-colored comparison chart that lists dispute resolution options across the top and information about each option process down the left side

Additional Resources

Michigan Department of Education- Office of Special Education (MDE-OSE) Information Line

888.320.8384 or email mde-ose@michigan.gov

Family Matters (resource page with one page fact sheets developed by the OSE for families)

[MDE - Family Matters](https://www.michigan.gov/mde/0,4615,7-140-6598_88187_81739-425428--,00.html) (https://www.michigan.gov/mde/0,4615,7-140-6598_88187_81739-425428--,00.html)

Special Education Mediation Service (SEMS)

[Special Education Mediation Services – Working Together for Student Achievement](https://www.mikids1st.org/)

(<https://www.mikids1st.org/>)

833.543.7178 or email info@mikids1st.org

SEMS Online Request for Services Form

[Request Services – Special Education Mediation Services](https://www.mikids1st.org/request-services/) (<https://www.mikids1st.org/request-services/>)

Disability Rights Michigan

[Disability Rights Michigan \(DRM\)](https://www.drmich.org/) (<https://www.drmich.org/>)

800.288.5923 or use the DRM Online Request Form-

[Online Request Form-Disability Rights Michigan](https://www.drmich.org/contact/) (<https://www.drmich.org/contact/>)



800-552-4821 www.michiganallianceforfamilies.org

We are here to support you!

 @MichiganAllianceForFamilies

 @michiganallianceforfamilies

 /MichiganAlliance

For more information visit:

<https://www.michiganallianceforfamilies.org>

Call: 800-552-4821

En Español 313-217-1060

Statewide Email: info@michiganallianceforfamilies.org



Michigan Alliance for Families

Michigan Alliance for Families is an IDEA Grant Funded Initiative of the Michigan Department of Education, Office of Special Education, and Michigan's federal Parent-Training and Information Center (PTIC) funded by U.S. Department of Education, Office of Special Education Programs (OSEP).

www.michiganallianceforfamilies.org

1-800-552-4821

info@michiganallianceforfamilies.org

