

Due Process Complaint and Hearing


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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	The IDEA defines a parent as: 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 welfare A surrogate parent who has been appointed by the student's educational agency A person appointed by a judge's order ***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).
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)



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Overview



Laws, Rules, and Guidance

- Federal regulations
- State rules
- Guidance documents

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



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Laws, Rules, 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



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Tools for Resolving Special Education Issues

- 1 Informal Meeting
- 2 Facilitated Meeting
- 3 Mediation
- 4 State Complaint
- 5 Due Process Complaint/Hearing



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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)




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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



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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



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Mediation



- 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



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When to use Mediation

- 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

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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





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Special Education Mediation Services (SEMS) Requesting FREE Service




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




Participate in intake process



SEMS contacts parties, arranges schedules, and processes paperwork



Parties meet



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What is a State Complaint?

Written, signed statement that alleges a public agency violated...

- State or federal special education rules or regulations related to special education programs and services (IDEA/MARSE), and Intermediate School District (ISD) Plan, or the Michigan Revised School Code (as related to special education)

Or has failed to implement...

- Decision by an Administrative Law Judge (due process hearing)

60 Calendar Days

Decision by MDE-OSE

Filed within 1 year of alleged violation

State complaint issues related to:

- Free Appropriate Public Education (FAPE)
- IEP
- Evaluation
- Discipline

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What is a Due Process Complaint?

Initiated by a parent or public agency alleging violations of the IDEA or MARSE related to:

- ✓ 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

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Due Process Complaints Are Not For...

Issue	Addressed by
Individual staff issues School Policies	✓ School/District Administrator ✓ School Board
Discrimination Section 504 Plans	✓ Office of Civil Rights (OCR)
Confidentiality Student records	✓ Student Privacy Office- US Department of Education ✓ Family Educational Rights and Privacy Act (FERPA)
Abuse Neglect	✓ Local law enforcement agency ✓ Department of Health and Human Service (DHHS) – Child Protective Services


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Filing a Due Process Complaint

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)





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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



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Timelines for filing a standard due process complaint

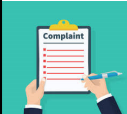
When must a due process complaint be filed?

- 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





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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



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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



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Resolution Meeting

- 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




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What is a Due Process Hearing

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




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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



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Administrative Law Judge (ALJ) – Duties and Authority

- ✓ 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



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What Happens in a Due Process Hearing?

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)



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ALJ Final Decision & Order

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**



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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



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Appealing the Due Process Hearing Decision

- 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



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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

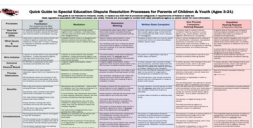


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Quick Guide to Special Education Dispute Resolution Processes

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



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



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