

Special Education State Complaints

Resolving disputes through informal and formal processes

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Acronyms and symbols

MDE-OSE – Michigan Department of Education-Office of Special Education

IDEA – Individuals with Disabilities Education Act

MARSE – Michigan Administrative Rules for Special Education

IEP – Individualized Education Program

FAPE – Free Appropriate Public Education

MDR – Manifestation Determination Review

ALJ – Administrative Law Judge

§ – Section (IDEA)

R – Rule (MARSE)

Parent as defined by the IDEA – 34 CFR § 300.30

Agenda

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How can I resolve the issue after filing the state complaint?
How is the concern corrected?

Laws, Rules, and Guidance

Individuals with Disabilities Education Act (IDEA)

34 CFR §300.506 (Mediation)

34 CFR §300.153 (Filing a state complaint)

34 CFR §300.610-627 (Confidentiality of Information)

Michigan Administrative Rules for Special Education (MARSE)

R 340.1851 – R 340.1855 (State complaints)

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

Special Education State Complaints: Procedures and Model Forms (May 2023)

Special Education Dispute Resolution Options (June 2021)

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Why?

Why consider special education dispute resolution options before filing a state complaint?

Options for resolving special education disagreements

Who has used one or more of these options?

Please answer Yes or No in the chat

- 1** Informal Meeting
- 2** Facilitated Meeting
- 3** Mediation
- 4** State Complaint
- 5** 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
- ✓ Voluntary process
- ✓ Facilitator coordinates discussion
- ✓ No cost to parent or school district
- ✓ 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

- ✓ Mediation offers a safe, neutral environment for parties who disagree in order to resolve a specific dispute.
- ✓ Mediation does not delay a parent's right to file a state complaint or due process complaint/hearing.
- ✓ Voluntary process-parties must agree to mediation.
- ✓ A trained, neutral mediator guides parties through the mediation process, assisting in negotiation to resolve differences.
- ✓ Conversations are confidential, can't be used in other court proceedings and the agreement is a legally enforceable document.
- ✓ No cost to parent or school district.

When to use mediation

- Any dispute (eligibility for programs/services, Transition issues, etc.)
- Communication, relationship issues
- Working towards resolving disagreements any time during the state complaint process

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
- Guide participants towards creating an agreement
- Take notes
- Record the agreement

A Mediator will not

- Make decisions
- Give legal advice
- Take sides

Special Education Mediation Services (SEMS)

Requesting **FREE** Service



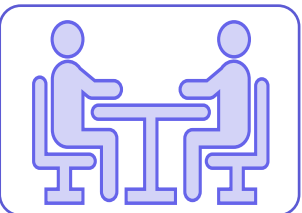
Call 833-KIDS-1ST (833-453-7178)
Mikids1st.org (fill out Request for Services form)



Participate in intake process



SEMS contacts parties, arranges
schedules, and processes paperwork



Parties meet

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What?

What is a state complaint, it's purpose and the required components?

What is a state complaint?

A state complaint is a written, signed statement that alleges a public agency has violated or failed to implement

- state or federal special education rules or regulations related to special education programs and services (MARSE or IDEA)
- An IEP
- an Intermediate School District (ISD) plan
- Michigan Revised School Code (as related to special education)
- state application for federal funds
- A decision made by an Administrative Law Judge

Common issues addressed in a state complaint

Related to the **IEP**

- Parent not invited to an IEP meeting
- IEP not being implemented
- Goals and objectives are not measurable
- Services (amount, description, etc.) are not clear

Related to **Evaluation**

- District did not respond to parent's request to evaluate
- Evaluation was not completed within the timeline required

Related to **discipline**-student suspended/expelled

- No services provided
- No Manifestation Determination Review (MDR) was done

Related to **Free Appropriate Public Education (FAPE)**

- Programs/services not appropriate

Related to **Records**

- District didn't allow parent to see child's records-access to records

Issues previously decided in a due process complaint involving the same parties, cannot be investigated through a state complaint

Where to get information about

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

What information is required to file a state complaint?

- Statement that a public agency violated the IDEA, MARSE, Michigan Revised School Code related to special education programs and services, or failed to implement an IEP, an ALJ decision, an ISD plan, or the state application for federal funds under the IDEA
- Facts on which the statement is based
- Allegation that the violation did not occur more than
 - one year before the date the complaint is received by MDE OSE
- Signature and contact information of complainant

Not required: citations in law or rule for allegations

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Who?

Who can file a state complaint?

Who can file a state complaint - Complainant

Anyone can file a state complaint. It does not have to be the child's parent and the person does not have to live in Michigan.

- Parent/guardian/foster parent/surrogate parent assigned by the school
- Child's relative
- School personnel
- Doctor, therapist, community mental health supports coordinator, case worker

The person who files the state complaint is the **complainant**.

Complaints filed by someone who is not the parent

- Written, signed, and dated release of information submitted to the OSE
- Allows communication between the OSE, nonparent complainant and parent

Who can file a state complaint – Respondent

The public agency that the state complaint is filed against is the **respondent**.

Public agency includes:

- School district
- Charter school/Public School Academy (PSA)
- Intermediate School District (ISD)
- Regional Educational Service Agency (RESA)
- Michigan Department of Education (MDE)
- Other state agencies providing education to students with disabilities

Individual and systemic state complaints

Individual Complaint



Complainant believes the school, school district, or ISD violated a special education rule or regulation for an individual child, and they want a remedy (corrective action) for the child.

Systemic Complaint



Complainant believes the school, school district, or ISD violated a special education rule or regulation for a group of students **OR** a district wide policy or a procedure violates a special education rule or regulation **AND** they want a school, district, ISD remedy (corrective action).

State complaint – specific student

State complaints about a specific student must also include

- Child's name and address
- Name of the school the child is attending
 - If child is homeless, available contact information
- Description of the nature of the problem, including facts related to the problem
- To the extent possible, a suggested solution to the problem

The Office of Special Education (OSE) has a **State Complaint Model Form**

- Not required to use Model Form
- Ensure all required information is submitted

4 Where?

Where do I file a state complaint?

Where to file the state complaint

The OSE does not accept anonymous or verbal state complaints

A written, signed state complaint submitted to the OSE by mail, fax, email, or hand delivery

Michigan Department of Education
Office of Special Education – State Complaints
608 West Allegan Street
Lansing, Michigan 48909
Fax: 517-241-7141
Email: MDE-MIComplaints@michigan.gov

Assistance must be offered with filling out the state complaint if allegation is made verbally to school district

5 When?

- When can a state complaint be filed?
- When will the investigation process and a decision be finalized?
- When will corrective action be ordered?

State complaint process

A state complaint must be **received** by the Office of Special Education (OSE) within one year of the alleged violation.

After the complaint is filed, the OSE has 60 calendar days to complete the investigation and issue a final decision.

Extension of the state complaint timeline for

- Exceptional circumstances
- Mediation through SEMS

State complaint procedures – Things to know

- The OSE investigator assigned to the complaint = case manager
- The OSE conducts the investigation with support from the ISD when state complaint is filed against one of their school districts
- The OSE case manager and ISD representative gather relevant information used to determine facts of the case
- The OSE conducts the investigation without support from the ISD when state complaint is filed against an ISD, or when the OSE determines there is a conflict of interest involving a school district

State complaint procedures timeline (Steps 1-3)

Receipt of Complaint (Day 1)

- OSE receives state complaint
- Potential state complaint is date stamped

Intake & Determination of Sufficiency (Days 1-3)

- OSE reviews complaint to make sure all required information is included (sufficient)
- 60-calendar day timeline begins, OSE case manager assigned
- If not sufficient, OSE notifies complainant of missing information

Notification (Days 1-5)

- When complaint is determined sufficient, OSE notifies parties and other relevant individuals and sends introduction letter

State complaint procedures timeline (Steps 4-6)

Issues Letter (Days 3-10)

- OSE identifies issues to be investigated in the state complaint based on documentation
- OSE case manager shares identified issues with ISD representative
- Issues letter sent to all parties; public agency has 10 calendar days to send documentation

Investigation (Days 10-45)

- OSE gathers relevant information
- Complainant interview, complete questionnaires, provide additional information
- OSE reviews data

Draft of Final Decision (Days 15-50)

- SE case manager composes draft report

State complaint procedures timeline (Steps 7-8 and Final Decision)

Administrative Review of Draft Final Decision (Days 45-60)

- OSE does internal review of draft final decision
- Draft findings of fact shared with ISD representative, for review only
- OSE prepares MDE's final decision of the state complaint

MDE Issuance of Final Decision (By day 60)

- OSE sends MDE final decision to the parties and other relevant individuals
- OSE notifies complainant by email/phone that MDE final decision has been issued

Final Decision

- Final decision issued
- If there is no violation by public agency – case is closed
- If there is a violation by public agency – corrective action is ordered

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How?

- How do I still resolve the issue after filing a state complaint?
- How do I dismiss the state complaint?
- How do I disagree with the findings?
- How does the issue get corrected?

Options available after filing a state complaint

Resolving the issue through mediation

- Following mediation, the state complaint (all of it or a portion of it) may be withdrawn through a specified agreement or in a separate request from the complainant

Withdrawal

- Complainant can withdraw a state complaint at any time during the 60-calendar day investigation for any reason
- Complainant submits a written request to the OSE (mail, email, fax, or hand delivery)

Dismissal

- A state complaint is dismissed by the OSE (all of it or a portion of it) when issues raised in the complaint are resolved through a due process complaint final order issued by an ALJ.

Disagreement with the final decision of a state complaint

A final decision issued by the Michigan Department of Education (MDE) is final.

Comprehensive state complaint investigation is completed within the 60-calendar day timeline required by the IDEA.

No administrative appeal or reconsideration requests are permitted in Michigan.

Types of corrective action

Corrective Action

The OSE will order corrective action when a violation is identified

Specific to the violation

Intended to ensure future compliance for all students with disabilities within the public agency and to correct the non-compliance for an individual student

District Level (CAP)

Reviewing, and if necessary, revising procedures

Providing staff training

Informing the board of education when persistent non-compliance occurs

Student Level (SLCAP)

Conducting an evaluation

Convening an IEP Team meeting

Developing a behavior intervention plan

Awarding compensatory education

Determining the need for Tiered Corrective Action and Technical Assistance

- When a school district has more than 3 state complaints containing the same/similar violations of the same issues within the same calendar year
- Corrective action issued as part of the final state complaint decision may include increased level of activities, monitoring, and technical assistance
- Corrective action activities determined on an individual district basis
- May include consideration of district size, number of students, and past monitoring and technical assistance

Tiered Corrective Action and Technical Assistance

Universal corrective

- Review and revision of policies and procedures
- Professional development for relevant staff

Targeted corrective action may include

- Intentional focus on specific area(s) of noncompliance that have not been corrected
- Training of specific staff
- Review and revision of policies and practices in collaboration with ISD
- Professional development provided by outside people/groups
- Assurance statements from staff, director of special education, and/or superintendent

Intensive corrective action could

- Board of education presentations
- Increased monitoring of corrective action activities and/or
- assignment of a statewide monitor for increased technical assistance and/or
- Educational benefit review training for district's special education and administrators

Proof of compliance

Identified noncompliance corrected as soon as possible, no later than 1 year from the date the final decision is issued

The OSE and ISD monitor/verify progress of completion of corrective action in Catamaran before closing out the state complaint

Verification of completed corrective action includes

- Review of documentation submitted
- Random selection of special education files and/or
- Staff interviews

Student-level corrective action

- Must be completed within 30 school days
- Includes plan for providing compensatory services
- Compensatory services provided as soon as possible, no later than 1 year after final decision is issued

Uncorrected Noncompliance (UNC)

UNC occurs when a school district fails to correct identified noncompliance within one year of being notified, despite having Corrective Action Plan (CAP) or taking corrective actions

This noncompliance is recorded in Catamaran

Next steps:

The OSE will notify the district via Catamaran

The OSE will require the district to receive technical assistance, training, and other enforcement actions, which may include withholding IDEA funds until compliance is achieved

UNC status negatively impacts Intermediate School District determinations



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