



Special Education Due Process Complaint Procedures

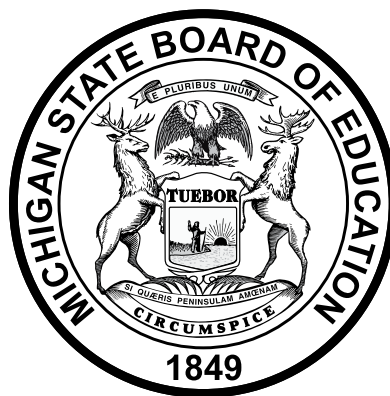
The Michigan Department of Education (MDE)
procedures regarding special education
administrative due process hearings.

December 2011



**Michigan Department of Education
Office of Special Education**





State Board of Education

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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.
SOD	Statement of Delivery
§	Section

Due Process Complaint Procedures

1. Delivery

- a. A due process complaint shall be delivered by hand, by mail, or by facsimile transmission (fax).
- b. A due process complaint must be delivered to the:
 - i. Other party (or parties), and
 - ii. Office of Special Education (OSE) of the Michigan Department of Education (MDE).
- c. If the other party (or parties) is a public agency, the due process complaint shall be delivered to:
 - i. The Superintendent, or
 - ii. The Special Education Director, or
 - iii. An Administrator (such as the principal) of the public agency.
- d. If the other party is a public school academy the due process complaint shall be delivered to:
 - i. The administrator primarily in charge of special education programs and services (usually a principal); or
 - ii. The chief administrative officer (an administrator of the authorizing agency, authorized to act on behalf of the authorizing agency).

2. Statement of Delivery

The due process complaint delivered to the OSE and the other party (or parties) must include a Statement of Delivery (SOD) describing the facts of delivery to the other party (or parties), including:

- a. If by mail, the person the complaint was addressed to and the date it was mailed.
- b. If by fax, the person the complaint was addressed to and the date and time it was sent.
- c. If in person, the date and place the complaint was delivered and the person to whom it was given.

3. Receipt of a Due Process Complaint by the OSE

- a. A due process complaint is deemed to be "received" by the OSE on the day it is received, excluding weekends, federal and state holidays, and days that the OSE office is closed.
- b. If the last page of the complaint is received after 5:00 p.m., it will be deemed to be received on the next day that the OSE office is open.

4. Constructive Receipt of a Due Process Complaint

For establishing a filing date, the MDE will consider the complaint to have been received by the public agency as follows:

- a. If by mail: three business days after the SOD states that it was mailed.
- b. If by fax:
 - i. On the date stated in the SOD, if faxed before 5:00 p.m. Monday–Friday.
 - ii. On the next business day if faxed after 5:00 on Monday–Friday.
 - iii. On the next business day if faxed on a day that the district is closed.
- c. If in person:
 - i. On the date stated in the SOD, if delivered before 5:00 p.m. on Monday–Friday.
 - ii. On the next business day if delivered after 5:00 p.m. on Monday–Friday or a day that the district is closed.

Due Process Complaint Procedures

5. Documentation of Date of Receipt

The OSE and the other party (or parties) shall record the date that the due process complaint is received on the first page of the complaint.

6. Notification of Receipt of Complaint

- a. The “respondent” [the party (or parties) that is the subject of the complaint] shall notify the OSE that a due process complaint has been received.
- b. The notification shall be done immediately, but no later than the next business day or day the public agency is open.

7. Date Filed and Sufficiency of Due Process Complaint

- a. Final determinations regarding when a complaint is received or filed are made by the Administrative Law Judge (ALJ) assigned to the case.
- b. Due process timelines begin the day after a complaint is properly filed.
- c. The due process complaint is properly filed the day after the OSE and the other party receive a due process complaint that meets all the requirements of the *Individuals with Disabilities Education Act* (IDEA) regulations at § 300.508.
- d. Determinations regarding sufficiency of a due process complaint are made by the ALJ assigned to the case.

8. Minimum Information Required and Referral to the Michigan Administrative Hearing System (MAHS)

The OSE shall file the due process complaint and promptly forward it to the Michigan Administrative Hearing System (MAHS) when the due process complaint, at a minimum:

- a. Identifies the student’s name;
- b. Identifies the party (or parties) that are the subject of the complaint;
- c. Is signed by the complainant; and
- d. Contains an SOD.

9. Administrative Law Judge (ALJ) Decision—Implementation and Proof of Compliance

The public agency shall implement the provisions of the final Decision and Order as ordered by the ALJ and provide proof of compliance with those provisions to the OSE.

- a. Following the issuance of the final decision, the OSE shall:
 - i. Provide a directive to the public agency identifying the required form and content of the proof of compliance to be provided by the public agency.
 - ii. The form and content of the proof of compliance directed by the OSE shall be consistent with the requirements of the final decision.
 - iii. Provide a copy of the directive to the complainant.
- b. The public agency must submit the required proof of compliance within the timeline specified by the ALJ Order or as directed by the OSE.

Due Process Complaint Procedures

10. Closure of the Due Process Complaint

- a. The MDE will close the due process case when final proof of compliance meeting the requirements in the ALJ order is received.
- b. The MDE will notify all the parties and the ISD that proof of compliance has been received and the complaint is closed.

11. Resolution Session Summary Form

When a due process complaint is filed, the OSE will provide the public agency with a Resolution Session Summary Form.

- a. A representative of the public agency shall complete and submit a Resolution Session Summary Form for each due process complaint filed by or against the public agency (or agencies).
- b. The Resolution Session Summary Form must be submitted to the OSE by:
 - i. Mail,
 - ii. Fax [identifying the case by district and Special Education Hearing (SEH) number only], or
 - iii. Email (identifying the case by district and SEH number only).
- c. The district shall submit the Resolution Session Summary Form:
 - i. Within fourteen (14) days after conclusion of the resolution session, or
 - ii. Immediately following the resolution of a due process complaint through mediation or other means, or
 - iii. Within 14 days after the resolution period has expired (30 days for a general due process matter, 15 days for an expedited due process matter).

Appendix A: Glossary

Allegation	A statement describing how a public agency may have violated state or federal special education rules and regulations.
Complainant	The person or organization filing the due process complaint.
Decision/Order	The report that is issued by the ALJ following a full hearing. The report includes which party (the parent or the public agency) that the ALJ finds in favor of and what the public party must do if the decision is in favor of the parent (on behalf of the student).
Evidence	Documents, objects, pictures, and verbal statements.
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: • 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).
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.

Appendix A: Glossary *continued*

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.
Resolution Period	The time period allowed by the IDEA for the parties to resolve a due process complaint before a hearing is scheduled.
Resolution Session (Meeting)	A required meeting between the public agency and the parent, after a due process complaint has been filed, to attempt to resolve the complaint without a hearing.
Respondent	The party (or parties) that is the subject of the complaint, or who the complaint is filed against.
SEA	State educational agency; the MDE is the SEA for Michigan.
SOD	Statement of Delivery; a statement in the complaint describing the facts of delivery to the other party, identifying the method of delivery, the date of the delivery, and the name of the person to whom the delivery is addressed.

Appendix B: Model Due Process Complaint/Request for Hearing 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 Due Process Complaint/Request for Hearing Form

PURPOSE: This model form may be used to submit a request for a due process hearing to resolve a disagreement about the identification, evaluation, eligibility, educational placement, or manifestation determination of a student, or regarding the provision of a free appropriate public education for a student under the *Individuals with Disabilities Education Act* (IDEA).

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. You must also provide a copy to the school district(s) that the due process complaint is against. The complaint will not be filed until the MDE and the district(s) have received a copy of the complaint. 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				
*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 Due Process Complaint/Request for Hearing Form *continued*

*PROBLEM AND FACTS

What is the nature of the problem that relates to the student's special education program and what are the facts that relate to the problem? Include dates, if known. (Attach additional pages if necessary.)

*PROPOSED RESOLUTION

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

*STATEMENT OF DELIVERY

Check one of the boxes below and fill in the information below the selected box.

☐

A copy of this due process complaint was sent to the district(s) by mail:

Addressed to: _____ Date mailed: _____
(Name of Person)

☐

A copy of this due process complaint was sent to the district(s) by fax:

Addressed to: _____ Date mailed: _____ Time Sent: _____
(Name of Person)

☐

A copy of this due process complaint was delivered to the district(s) in person:

Addressed to: _____ At: _____ Date: _____
(Name of Person) (Place it was Delivered)

Printed Name

*Signature

Date

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 due process complaint has been filed, the hearing timeline may be extended 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 due process hearing.

For more information about mediation and informal dispute resolution, see the MDE Special Education Due Process 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 _____ Administrative Law Judge _____