

August 31, 2009



Resolving Special Education Disputes

New State Complaint Procedures

Office of Special Education and
Early Intervention Services

Harvalee Saunto

Investigation of State Complaints

The Legal Basis

- Individuals with Disabilities Education Act (IDEA) 2004
- IDEA Regulations (2006)
- Michigan Administrative Rules for Special Education (MARSE)
- Michigan Department of Education Special Education State Complaint Procedures



When Did The Changes Begin?

The new special education state complaint rules and procedures became effective April 3, 2009.

The biggest change was moving from a 2-tier investigation process to a 1-tier, single investigation and report process.



Definition of a State Complaint

The Michigan Administrative Rules for Special Education (MARSE) defines a state complaint [R340.1701a(c)]

A state complaint means:

- a written and signed allegation that includes
 - the facts on which the allegation is based,
- by an individual or an organization,
- alleging a violation to:

Definition of A State Complaint

(cont.)

- an IEP team report, administrative law judge decision, or court decision regarding special education programs or services;
- the state application for federal funds under the IDEA.

F.Y.I. State Complaints Filed

	2006-2007	2007-2008	2008 - 2009		
Complaints Filed	262	280	1-Tier 79	2-Tier 178	TOTAL 257

F.Y.I.

Most frequent complaint issues:

- IEP implementation accounted for six times the number of allegations in the next most frequent issue.
- In order of frequency, the most frequent issues were:
 - 1) IEP implementation;
 - 2) IEP participation/content;
 - 3) Jurisdiction (the allegation did not meet the definition of a special education state complaint);
 - 4) Notice;
 - 5) Suspensions;
 - 6) Manifestation Determination Review (MDR);
 - 7) Temporary Placement and
 - 8) IEP-Mutual Time/Place, Educational Records, and MET/Evaluation Process.



Timelines in The New State Complaint Procedures



Investigation of a state complaint must be completed within 60-days [§300.152(a)]
(extension of the timeline is allowed for exceptional circumstances)

Resolution Period	10 days
Investigation & Final Report Issued	30 days
Request For Reconsideration	10 days
Reconsideration & Amended Final Report/Letter	<u>10 days</u> 60 DAYS

The State Complaint 60-Day Timeline



Prior to Day 1	Day 1	10	40	50
Potential Complaint Received	*Resolution Period	Investigation Conducted	Request for Reconsideration Submitted	Reconsideration of Final Report: Amended Final Report Issued Or Letter Sent: "No Change"
Complaint Filed	10 Days	Final Report Written And Issued 30 Days	10 Days	10 Days
<p><i>*Resolution may occur at any time prior to issuing the Final Report</i></p> <p><i>*Timeline may be extended for exceptional circumstances</i></p>				

9/1/2019

Overview of the Changes:

1. Complaint must be filed with the MDE, not
ISD
2. Formal and informal resolution
is encouraged throughout
the process
3. Dismissal of allegations that do not meet
the definition of a special education
complaint
4. LEA can offer corrective action or resolution
immediately

More Changes:

5. Only unresolved allegations are investigated
6. Investigation and the final report are a collaborative effort between the MDE and the ISD
7. Reconsideration:
 - Not an automatic right to appeal
 - May be requested by complainant and district



Receiving a Potential Complaint (Before Day 1)

Prior to Day 1	D a Y 1 **60	10	40	50
Potential Complaint Received Complaint Filed	*Resolution Period 10 Days	Investigation Conducted Final Report Written And Issued 30 Days	Request for Reconsideration Submitted 10 Days	Reconsideration of Final Report: Amended Final Report Issued Or Letter Sent: "No Change" 10 Days

**Resolution may occur at any time prior to issuing the Final Report*

*** Timeline may be extended for exceptional circumstances*



Receiving a Potential Complaint (Before Day 1)

A potential complaint is not a “State Complaint” until it is filed

1. The potential complaint must be filed with the MDE and a copy given to the LEA. (MDE will forward a copy to the LEA)
2. State complaints are no longer received/filed with the ISD/RESA
3. All required components must be included

Model form available on MDE web:

www.michigan.gov/ose-eis

Required State Complaint Components

IDEA §300.153:

- Statement of alleged violation
- Facts on which the allegation is based
- Signature and contact information of the complainant
- Within one year of alleged violation
- To MDE and LEA serving the child

Required Components (cont.)

If complaint is in regard to a specific child:

- The child's name and address
- The name of the school the child attends
- Contact information if the child is homeless
- A description of the problem (issue)
- A proposed resolution



Day #1 = After Complaint is Filed

The complaint is “filed” when it is received and has all the required components

The investigation must be completed no later than 60 days after the complaint is filed

When the Complaint is Filed MDE Will:

1. Assign a case number & case manager
2. Determine if ISD will collaborate
3. Notify complainant, LEA, ISD
4. Send documents:
 - Procedural Safeguards,
 - Michigan Administrative Rules,
 - State Compliant Procedures
5. Encourage informal, local resolution and send information about mediation and alternative dispute resolution

Resolution Period begins on Day #1!

Resolution Period

(Days 1 through 10)

Prior to Day 1	D a y 1	10	40	50
	**60			
Potential Complaint Received	*Resolution Period	Investigation Conducted	Request for Reconsideration Submitted	Reconsideration of Final Report: Amended Final Report Issued Or Letter Sent: "No Change"
Complaint Filed		Final Report Written And Issued		
	10 Days	30 Days	10 Days	10 Days

**Resolution may occur at any time prior to issuing the Final Report*

*** Timeline may be extended for exceptional circumstances*



Resolution Period

(Days 1 through 10)

Two tracks of activity

MDE and ISD

are clarifying allegations & will dismiss those that do not meet the definition of a special education complaint



LEA & COMPLAINANT

are meeting and attempting to resolve issues

Allegation(s) Dismissed

If the ISD and the MDE determine allegations do not meet the definition of a special education state complaint:

- MDE dismisses the allegations, notifies the complainant and LEA by letter.
- Contact information for other agencies is provided to the complainant.



State Complaints and Due Process Complaints/Hearings

A parent or public agency may file a due process complaint on any of the matters described in Section 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child). [300.507(a)(1)]

Simultaneous State and Due Process Complaints

If a written complaint is received that is also the subject of a due process hearing... or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.
[300.152(c)]

Resolution Period

The MDE encourages the LEA and Complainant to resolve the complaint prior to investigation.

The LEA may:

- Respond to allegations within 10 days
- Offer to correct or enter into dispute resolution
- Contact Michigan Special Education Mediation Program (MSEMP) if complainant agrees to Mediation

Dispute Resolution

Benefits:

- Relationship between LEA and parents/student
- No cost –vs- time, money and energy involved in the state complaint or due process hearing
- LEA and parents retain local



Types

- Mediation
- IEP facilitation
- Local Resolution



The Investigation and Final Report

Prior to Day 1	D a y	1	10	40	50
		**60			
Potential Complaint Received	*Resolution Period	Investigation Conducted	Request for Reconsideration Submitted	Reconsideration of Final Report: Amended Final Report Issued Or Letter Sent: "No Change"	
Complaint Filed	10 Days	Final Report Written And Issued	10 Days		
		30 Days		10 Days	

**Resolution may occur at any time prior to issuing the Final Report*

*** Timeline may be extended for exceptional circumstances*



The Investigation and Final Report

- Collaborative process - MDE and ISD
- 3-way call with complainant, ISD and MDE investigators
- Additional conversations and correspondence through out investigation



- Opportunity to submit additional information or documents

- Only one investigation and one report
 - No automatic appeal process
 - Reconsideration may be requested by the complainant and the district

Reconsideration Request

(*Days 41 through 50)

Prior to Day 1	D a y 1 **60	10	40	50
Potential Complaint Received	*Resolution Period	Investigation Conducted	Request for Reconsideration Submitted	Reconsideration of Final Report: Amended Final Report Issued Or Letter Sent: "No Change"
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**Resolution may occur at any time prior to issuing the Final Report*

*** Timeline may be extended for exceptional circumstances*



Request for Reconsideration

(*Days 41 through 50)

- Timeline for submitting request begins when the Final Report is received
- Can be requested by Complainant or the district
- Must present new or additional information that was not available during investigation,
 - must be substantial (will cause a change in the original finding)

Reconsideration & Amended Final Report

Prior to Day 1	D a y 1 **60	10	40	50
Potential Complaint Received Complaint Filed	*Resolution Period 10 Days	Investigation Conducted Final Report Written And Issued 30 Days	Request for Reconsideratio n Submitted 10 Days	Reconsideration of Final Report: Amended Final Report Issued Or Letter Sent: "No Change" 10 Days

**Resolution may occur at any time prior to issuing the Final Report*

*** Timeline may be extended for exceptional circumstances*

Reconsideration & Amended Final Report

- Reconsideration does not occur if documentation of new information is not submitted.



- The finding is changed and an amended final report is issued if information or documents presented substantiate a change.

Reconsideration & Amended Final Report

- If the conclusion is changed the Final Report will be amended
 - The Amended Final Report is sent to the complainant, the LEA and the ISD
- If the conclusion does not change, the complainant and the LEA will be informed by a letter from the MDE





Appeal of the State Complaint

In some cases a parent or the public agency may appeal a state complaint decision by filing a due process complaint with the MDE.

However, not all state complaint issues can be addressed by the special education administrative hearing process.

A party aggrieved by the MDE decision may file an action in a court of competent jurisdiction. In some cases, the party must have first exhausted their administrative remedies.

Parties are advised to consult an attorney when considering appealing the state complaint decision.



Contact Information

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