

Chapter 8

PROBLEM SOLVING AND COMPLAINTS

What This Chapter Is About

Disputes over special education services may be resolved informally or formally.

When you disagree with your child's school district over eligibility, goals, services, or supports, the special education process offers several opportunities to informally resolve disputes. You should know your rights and responsibilities in these situations so that your voice is heard.

In some cases, you may have to resort to formal processes. These processes include complaints, due process hearings, and mediation.

When a school violates the law or fails to do something the law requires, you may file a complaint. Sometimes, you may be able to resolve the complaint informally; other times you may have to file a formal complaint.

A formal state complaint must be written, signed, and sent to the Michigan Department of Education (MDE) and your school district. You can file a complaint up to one year after the problem occurs. The complaint must contain information about the problem you are having and the laws you think have been broken. If the MDE finds your complaint is true, they will order the school to correct its actions.

You also may file a federal complaint under Section 504 of the Rehabilitation Act with the U.S. Department of Education Office for Civil Rights. This kind of complaint is useful when a school violates the law against a student who is not eligible for special education but nevertheless has a disability. You can file a complaint up to 180 days after the problem occurs.

Addresses and sample complaint letters are at the end of the chapter. The U.S. Department of Education has also prepared a guide to dispute resolution. See Appendix 8-5.

You may request a due process hearing by filing a due process hearing notice within two years of the date of the Individualized Education Program (IEP). Hearings are complex legal proceedings, and DRM recommends that parents seek legal representation in due process hearings.

In a due process hearing, both parties may call and question witnesses, present documentary evidence, make arguments, receive a written decision, and engage in other actions related to legal proceedings. Parents have the right to decide whether to have the student present and whether to open the hearing to the public. During the hearing process, the student must remain in his or her present educational setting. The hearings must be conducted under strict timelines, with the option of postponement upon order of the hearing officer. The hearing officer must issue a written decision, which may be appealed to court within 90 days.

Mediation is available through public and private providers. Mediation allows the parties to settle disagreements without resorting to a formal hearing.

Knowing how to resolve disputes both formally and informally is the key to effective advocacy. This knowledge can help you improve your child's education and can build or maintain cooperative relationships with school staff that make significant contributions to your child's educational success and well-being.

See MDE's publication on Special Education Dispute Resolution Options for more information

https://www.michigan.gov/documents/mde/DisputeResolutionOptions_727399_7.pdf

Advocacy Hints in Chapter 8

- ◆ Use the evaluation process to gather information and identify new solutions (Page 4).
- ◆ Use the complaint process to address problems with both the content of your child's program and problems with the process or implementation of the program (Page 6).
- ◆ Use the complaint process to address systemic issues affecting lots of children instead of handling the problems one at a time (Page 7).
- ◆ Get a signed release of information from the student's parents if you want to receive information about the outcome of a complaint on a particular student (Page 7).
- ◆ Try to focus on a few important problems that have a real effect on your child's education, keeping in mind you do not have to know everything about the situation to ask the state to look into it (Page 8).
- ◆ If your child has been denied services and lost ground as a result, ask for remediation to make up for services not provided in the past (Page 9).
- ◆ You must file a due process hearing request within two years of when you learn or should know of the issue you are challenging (usually an Individualized Education Program Team (IEP Team) meeting date) (Page 12).
- ◆ You must file a notice before the hearing process will start; it is not enough simply to disagree with an IEP and request a hearing (Page 13).
- ◆ Make sure to include all possible issues, as specifically as you can, in the due process notice (Page 14).
- ◆ The law is still evolving around what alternative ways are available to write and enforce agreements reached in resolution sessions and mediation (Page 15).
- ◆ Disclose your documents five days before a hearing and check your child's file to make sure you have everything you need (Page 16).
- ◆ Think carefully before opening a hearing to the public (Page 16).

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- ◆ Get a written decision and transcript to understand what happened (Page 16).
- ◆ You may have to use the complaint process, rather than requesting a hearing, to address process problems (Page 17).
- ◆ Parents may get attorneys' fees only if they win at hearing or court (Page 18).
- ◆ Schools may be able to get attorneys' fees from parents in rare situations available for many years in federal law (Page 18).
- ◆ Mediation is available any time (Page 19).
- ◆ Mediation agreements are contracts; they bind schools and parents (Page 19).

Informal Problem Solving

In this section we will identify informal strategies and steps to use when you disagree with a school's decision.

First, identify the problem. Be specific. For example, a problem stated as "The principal doesn't like my child and keeps picking on him and sending him home," will have a solution that is dependent on factors that are, for the most part, out of the parent's hands, such as interactions that occur at school on any given day, how patient the principal is, or how non-confrontational the child is. Defined more narrowly, however, the problem might be stated as "My child has a difficult time in situations where he has to wait quietly. These situations often involve times when the principal is supervising, such as in the lunchroom, lining up to come into the school, or in the halls. My child gets restless and starts teasing the other children by poking and pushing." With this definition of the problem, you have identified a time when the situation occurs, the important players, the action that takes place, and the situation that precedes the action. With this definition, a solution is much more likely.

Problems take many forms. It may be a *program* problem (for example, your child's IEP does not have the necessary level of service), a *process* problem (for example, the school did not tell you when your child failed to turn in her homework), a *human interaction* problem (for example, you feel intimidated by the assistant principal), or an *information* problem (for example, no one knows what level your child is reading at). The form of the problem is important in understanding how to solve it.

Second, gather information about the issue. This is the time to determine where you can get the information you need. If you believe that this is a special education problem, you may need to learn about your rights and the IEP process. You will also need impartial information, usually from a third-party evaluator, on your child's needs.

► **Advocacy Hint: Services are provided based on evaluations.** Services and supports are not provided at a parent’s request but are provided because there is evidence and experts who believe the student must have them to benefit from the education. The school district has the right — and the obligation in the law — to provide evaluations or to contract for them when requested by parents in most cases. If you disagree with the district’s evaluation, you may ask for an independent educational evaluation. (See Chapter 4.)

Third, identify possible solutions. Along with identifying the problem, it is important to identify possible solutions. At least one solution may seem obvious. “My son never gets his homework done. He knows the work, and does pretty well on tests, but his grade is partly based on homework.” Narrowly and clearly defined: “The school has provided a list of homework assignments. I am willing to work with him; the problem is he doesn’t remember to bring home his books.”

Try to think of several solutions to any given problem. The solution may not necessarily be expensive. Instead of a full-time aide to keep a student on task, could the classroom include quiet areas where the student can work?

How will you know the problem is resolved? The next step is to identify how you will know the problem is resolved. It may help to devise a measure for determining when the parent and the school will agree that the problem is resolved. When a parent says a child cannot read, and the school claims the child can, that he reads on a third-grade level, clarification may be necessary so that everyone is measuring the same thing in the same way. The school may be using a test to determine the child’s reading level; the parent may be using a classroom situation in which he or she heard the child reading aloud very hesitantly. The way the parent measures “reading” can be part of the solution.

“Ms. Smith, how will you know when Johnnie can read?” “When he can read the newspaper out loud pretty fluently.”

Fourth, figure out who can solve your problem. Problems differ in *who* has the power to solve them. If, for example, your child’s program includes a notebook kept daily by the teacher, and this is not happening, you would want to talk with the teacher first. If you go to your school board to resolve an issue related to your child’s IEP, you will not find a solution because the school board cannot order more services without deferring to the IEP process. On the other hand, if you want to work on issues related to getting rid of the modules where some classes are held and getting more classrooms, you may wish to go to the school board. Remember that there may be an overlap in responsibility.

If the person you are dealing with is not responding to your requests for resolution, s/he may lack the authority to solve the problem. In that case, don’t be afraid to find the person who does have the power to act. Remember, though, that the person at the top does not always have all the information. Even though it may sound like a good idea to call the school

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superintendent, especially when you are angry, that person may not be the most knowledgeable about special education services — and certainly not about your child. Similarly, the special education director may not know all about your child's program if the school psychologist is usually the person who conducts the IEP Team meetings. Be ready to explain your situation and provide support if the person lacks specific knowledge of your situation.

Finally, follow up. Keeping track of the implementation of a problem resolution is often harder than you would think. Occasionally there is a clear way to track follow-up, such as the legal timeline for special education evaluations or the measurement and reporting section of an IEP goal. In other cases, a teacher may suggest using a current classroom data gathering strategy to track implementation. If this is not the case, you should agree, with the person who will be implementing the solution, just how follow-up will be done. Set a quick meeting date to review progress.

Don't be afraid to use formal process if informal resolution does not work. Be careful, though, to use the right process. Some problem resolution methods, such as the complaint process, may be used by anyone, while others (such as due process hearings or independent evaluations) are specifically available to the parent in most cases.

Effective Advocacy Techniques

Advocacy is the willingness of one person to assist and to follow through on securing or protecting the rights of another. Effective advocacy is not easy, but the advocate who knows the student, who has mastered the technical material, and who is willing to present the student's needs in a calm, rational manner can do much to obtain appropriate educational programs and services. Here are some basic guidelines for advocates (and school personnel) to follow to be as effective as possible.

- ◆ Identify differences of opinion; listen and ask questions until you understand the other point of view.
- ◆ Try not to get upset or use “authority” to resolve issues. Special education programs are based on expert opinion, not “Mom said” or “We don't do it like that in this district.” Remember: You are not powerless.
- ◆ Come to meetings prepared to discuss problems and solutions. Hint: Remember that there can be many solutions to individual issues. When you are adamant that there is only one solution, you may eliminate solutions that might be even more effective.
- ◆ Be concise.
- ◆ Know what is on your child's IEP and keep a copy handy for quick reference.
- ◆ Save copies of evaluations. Increases of services are easier to obtain if you have the school's own evaluations documenting that there is no progress.
- ◆ Take your time. Do not feel pressured to sign something immediately. Take a copy home and think about it.

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- ◆ Keep track of releases of information that you sign (you may want to withdraw a release once the proposed information is received).
- ◆ Arrive promptly at meetings.
- ◆ Be as open as possible with information. But do not feel pressured to reveal family information that you do not wish the school to know.

The most important thing to do at a meeting with the school staff is to listen. The second most important thing is to ask questions until you are certain you understand.

Common Informal Problems and Solutions

A list of common informal problems and solutions is included at the end of this chapter in Appendix 8-1.

Formal Problem Solving

In this section we will identify appropriate formal action to take when you disagree with a school's decision or believe that a school has violated the law and when informal means of dispute resolution do not work. The two types of actions are **formal complaints** and **due process hearings**.

Formal State Complaints

A complaint is a written and signed allegation by an individual or organization that there is a violation of any of the following:

- 1) federal and state laws and regulations;
- 2) provisions of an ISD special education plan;
- 3) provisions of MDE's application for federal funds (state plan); or,
- 4) provisions of an IEP, a hearing officer decision, or a court decision regarding special education programs or services. **R 340.1701a(c).**

A complaint must be made within **one year** of the school's legal violation. **34 CFR 300.153(c).**

► **Advocacy Hint: The complaint process reaches broadly.** In the comments to the 2006 IDEA regulations, the Office of Special Education Programs made clear that "the broad scope of the complaint process is critical to each state's exercise of its general supervision responsibilities... the state complaint procedures can be used to resolve any complaint ... including matters concerning the identification, evaluation, or educational placement of the child, or the provision of Free Appropriate Public Education (FAPE) to the child." **71 Fed.Reg. 46601 (8/14/06).**

► **Advocacy Hint: Complaints can be systemic.** A complaint need not relate to a specific child but may relate to **patterns and practices** of violations that affect many students. For example, a person could file a complaint about a school’s failure to make a related service available without having to refer to specific children who need that service. In resolving a complaint, MDE has a responsibility under its general supervisory authority to address “appropriate future provision of services for all children with disabilities.” **34 CFR 300.151(b)(2); 71 Fed.Reg. 46601 (8/14/06).**

State law sets forth procedures for filing and investigating special education complaints. See **R 340.1851 through 1855**. MDE’s complaint procedures are called MDE Special Education Complaints: Procedures and Model Forms.

and are available on the MDE Office of Special Education website at:

https://www.michigan.gov/documents/mde/StateComplaints_ProceduresModelForms_727396_7.pdf

MDE has a fillable pdf version of the complaint form available at: https://www.michigan.gov/documents/mde/StateComplaintModelForm_727378_7.pdf

The complaint must include a statement that the school has violated the law, facts showing how the school violated the law, and the contact information for the person filing the complaint. If the complaint relates to a specific child, it must also include the child’s name and address, name of the school the child is attending, contact information if the child is homeless, a description of the nature of the problem the child is having, and a proposed resolution if known. **34 CFR 300.153(b).**

► **Advocacy Hint: Get permission.** When filing a complaint about a specific child, make sure to include proof that you have authority to file the complaint on behalf of that child and may receive information about the investigation and the outcome. See **R 340.1851(4).**

The complaint form or letter should be addressed and mailed, emailed, or faxed to:

Michigan Department of Education
Office of Special Education
P.O. Box 30008
Lansing, MI 48909
Email: MDE-MIComplaints@michigan.gov
Fax: (517) 241-7141

MDE will accept electronically filed complaints. If your complaint is not complete when you file it, MDE will let you know and let you fix it. **MDE, Special Education Problem Solving Process, page 11** (https://www.michigan.gov/mde/0,4615,7-140-6598_88185---,00.html).

You must also send a copy to your local school district. **34 CFR 300.153(d)**. You should send the letter by fax or certified mail, return receipt requested. Keep a receipt with the date and confirmation of receipt.

► **Advocacy Hint: Not too hot, not too cold, but just right.** In a dispute between a parent and school district, it can be tempting to complain about every possible area of violation. It can also be tempting to not complain about something when you don't have all the information. Try to focus on a few important problems that have a real effect on your child's education and remember that you do not have to know everything about the situation to ask the state to look into it.

After a State Complaint is Filed

MDE has 60 calendar days to investigate a complaint and issue a written decision. **34 CFR 300.152(a); R 340.1853(5)**. The timeline starts when a complaint is filed — that is, when MDE and the school district have received a complaint with all the basic information required by law. MDE may extend the 60-day timeline if:

- a) There is also a due process hearing request on the same issue for the same student;
- b) The parties have agreed to mediation; or,
- c) “Exceptional circumstances” (such as unexpected school closures, unusually complicated questions of law, large numbers of students affected, etc.) exist. **34 CFR 300.152(b), (c); R 340.1853(6)**.

During MDE's 60day complaint process:

- ◆ The MDE investigator interviews the person filing the complaint, talks with the person who filed the complaint, school officials and other relevant individuals, reviews records, and at the conclusion of the investigation, writes a Complaint Decision. When investigating a complaint challenging the appropriateness of a child's educational services or the denial of FAPE, MDE will look at both whether or not the school followed the proper procedures and whether or not the school reached an appropriate decision in light of the child's individual abilities and needs. This may include looking at evaluation data, interviewing individuals, and making an independent determination as to whether or not the school is violating the law. **71 Fed.Reg. 46601 (8/14/06)**.
- ◆ The complainant and the school district may try and resolve all or part of the allegation through an informal meeting or mediation. If this results in a mediation agreement, it is up to the parties who sign the agreement — not MDE — to ensure that it is followed.
- ◆ The school district can admit noncompliance in writing to one or all of the allegations. MDE will then order corrective action and require proof of compliance.

- ◆ The complainant can withdraw the complaint at any time for any reason. A withdrawal allows the complainant to re-file the same allegation with the one year timeline.

When a State Complaint Allegation is Substantiated

When any of the allegations made in a state complaint are substantiated the report will include corrective actions. **34 CFR 300.151(b)**.

MDE will direct the school district to take certain actions to correct the noncompliance and will give the district due dates for completing those actions. **R 340.1854**. In resolving a complaint in which it has found a failure to provide appropriate services, MDE must address: (1) How to remedy the denial of those services, including as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student; and, (2) appropriate future provision of services for all students with disabilities. **34 CFR 300.151(b)**.

If a school district refuses to comply, MDE may order the district to provide services, withdraw the district's authority to operate special education programs, withhold federal or state funds, withhold licenses or accreditation, or take court action. **R 340.1855**.

► **Advocacy Hint: Remediation required.** Federal and state rules explicitly recognize that compensatory education, sometimes referred to as “remediation,” is one of the remedies to be used when necessary in resolving complaints. Further, an order requiring a school to convene a new process to determine the extent of remediation does not comport with IDEA; MDE has the power and responsibility to order remediation directly when necessary to restore a child to where she or he would have been had the services specified in his or her IEP been received. **Fayette Co. BOE v. L.M., 478 F.3d 307 (6th Cir. 2007) cert den. 128 S. Ct. 693 (2007)**.

When a State Complaint Allegation is Not Substantiated

If MDE does not substantiate the complaint, it must still send a written copy of its investigation report to all involved parties.

The process for challenging a state complaint finding is not clear. In some circumstances, one might have to request a due process hearing. In other circumstances, it may be possible to appeal the finding by filing state or federal court action.

Tips on Filing an Effective State Complaint

When writing a complaint letter:

- ◆ lay out facts as concisely and as clearly as possible, focusing on events that happened within the last year (events older than that cannot be addressed through a complaint);

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- ◆ cite violations of all the relevant statutes and regulations, plans, IEPs, hearing decisions, or court orders;
- ◆ tell how the violation occurred and what effect it had on the child or children involved;
- ◆ request that the complaint be investigated without delay and that you be informed of the resolution of the complaint;
- ◆ ask for compensatory education if a child or children have missed out on services or lost other educational benefits;
- ◆ ask for changes in policies and procedures if a violation affects many children;
- ◆ ALWAYS sign and date your complaint;
- ◆ ALWAYS make a copy of your complaint;
- ◆ include a release of information if the complaint relates to a specific child and you are not the parent;
- ◆ send copies to MDE and the local district; and,
- ◆ keep a copy of the investigation report and any actions the local district and ISD propose to take to rectify the situation.

Federal Complaints

The United States Department of Education investigates complaints of noncompliance with Section 504 within educational programs. The U.S. Department of Education's Office of Civil Rights (OCR) is responsible for enforcing Section 504.

Section 504 prohibits discrimination based on disability in any program or activity that receives federal funds. Public education programs receive federal funds and must comply with the nondiscrimination provisions of Section 504. For instance, if a student in a wheelchair is denied access to art class because it is held in an inaccessible building, the school is in violation of Section 504 whether or not the student receives special education. Another example is the school's failure to justify the placement of a student in a separate school for students with disabilities. This is in violation of both Section 504 and IDEA unless it can be clearly shown that the placement is based on the student's unique needs.

Section 504 complaints are made in the same way as are state complaints but can be made only if the discrimination occurred within the past 180 days, unless there are special circumstances that would justify a waiver of that timeline. In order to file a complaint, write a complaint letter detailing all of the facts, all of the involved schools and persons, and all of the statutes and regulations you believe to have been violated. Attach medical documentation of the student's disability, along with any important reports, letters, or other written material. Make sure to include your recommendation on what should be done to correct the violation. Letters of complaint should be sent to:

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Office for Civil Rights, Cleveland Office
U.S. Department of Education
1350 Euclid Ave, Suite 325
Cleveland, Ohio 44115-1812
Telephone: (216) 522-4970 (Voice), (800) 877-8339 (TDD)

Unlike a state complaint, a federal complaint may be filed electronically. Go to:
<http://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>.

You may also wish to copy the Washington, DC, office:

U.S. Department of Education
Office for Civil Rights
400 Maryland Ave., S.W.
Washington, DC 20202-1100

Due Process Hearings and Appeals

A due process hearing may be requested over the issue of a student's identification, evaluation, eligibility, individualized education program or the proposed educational placement, or any matter relating to an appropriate education for the student. **34 CFR 300.507(a); R 340.1724f(5)**. A due process hearing is the only way a parent may assert “stay put” rights, under which a student stays in the current placement pending the outcome of the hearing.

The due process hearing system is exceptionally difficult for parents to navigate without the assistance of legal counsel. It is a formal court proceeding that follow the rules and processes that attorneys must follow in court. Parents have to, from the outset, review their claims against the school district to ensure that the claims have a basis in law and have merit. Parties must file and respond to specific notices and motions. Experts will need to be retained in most cases to support the claims of the parent. The State Bar of Michigan Lawyer Referral and Information Service, (800) 968-0738, is a good resource for finding an attorney. Some counties also have local attorney referral services, and Legal Services organizations may maintain panels of private attorneys who take on selected cases. DRM provides representation in selected cases that fit agency priorities.

See the MDE publication Special Education Due Process Complaint Procedures for more information.

https://www.michigan.gov/documents/mde/DueProcess_Complaint_Procedures_340126_7.pdf

When to Request a Hearing

A due process hearing may be requested by the student's parents or legal guardian, the district of residence, the operating district or the Michigan Department of Education. (If the student is 18 years of age or older, the student or his/her attorney must request the

hearing.) When any party requests a hearing, that party must notify the other parties of the intent to seek a hearing. **R 340.1724f(3).**

► **Advocacy Hint: Don't sit on your rights.** Federal law sets a time limit (two years) on how far back you can go in challenging IEPs. **34 CFR 300.507(a)(2).** This time limit is most important in situations where a school district has not met a student's needs over a long period of time and, as a result, there is a need for compensatory education or remediation. In other cases, if there is a problem with an IEP, the simplest way to resolve it is to call a new IEP Team meeting and, if you still disagree, challenge the finding from that meeting.

Other Civil Rights Laws. IDEA regulations say that asking for a hearing or review or bringing a lawsuit under special education law does NOT limit rights to seek action under the Constitution or other federal laws protecting the rights of students or youths with disabilities. There is one restriction. Before filing a lawsuit under other laws for a matter that is also covered by the special education law, a person must first go through the special education hearing process. This is called exhausting administrative remedies. **34 CFR 300.516(e).**

Complaints and Hearings Together. Federal regulations do not allow the state to investigate a complaint and convene a hearing on the same issue. 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. However, any issue in the complaint that is not part of the due process action must be resolved using the time limit and procedures. **34 CFR 300.152(c).**

How to Request a Hearing

Step 1: Prepare and send a "due process complaint notice." The parent, or the attorney representing the parent, must provide a "due process complaint notice" to the other party and forward a copy of the notice to the MDE.

The due process complaint notice is a very important first step since it sets the basis for attempting to resolve the issues be it through the resolution process, mediation, or the hearing process. Parents should seek assistance of counsel from the outset so that the issues outlined in the due process notice are thorough and comprehensive.

The notice must specify:

- ◆ Name of the child;
- ◆ Address where the child resides;
- ◆ Name of the school the child attends;

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- ◆ A description of the nature of the problem relating to the initiation or change with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education, including the facts relating to such problem;
- ◆ A proposed resolution to the problem to the extent known and available to the party at the time; and,
- ◆ If the child is homeless, the notice must provide contact information for the child and the name of the school the child is currently attending. **34 CFR 300.508(b).**

► **Advocacy Hint: No notice, no hearing.** A party cannot have a due process hearing until the notice has been provided which meets the requirements discussed above. **34 CFR 300.508(c).** It is not enough to merely disagree and request a due process hearing.

Nor is it sufficient (or even possible in many cases) to request a hearing by signing an IEP in disagreement. The Michigan model IEP form does not include a signature page, reflecting the I, in that no signature is required on an IEP — except for a signature providing consent for an initial IEP — in order to make it effective.

Step 2: Receive a response. The non-complaining party must respond to the due process complaint notice within *10 days* of receiving the notice, and specifically address the issues raised in the complaint.

What does this mean? Usually the parent is the person requesting the hearing. If the *parent* has requested a hearing, the school district has to respond to the due process notice, within 10 days, if they have not already sent to the parent a prior written notice regarding the subject matter contained in the parent's due process complaint notice. The district's response to the parent must include:

- ◆ An explanation of why the district proposed or refused to take the action at issue in the notice;
- ◆ A description of the options that the IEP team considered and the reasons why those options were rejected;
- ◆ A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; and
- ◆ The description of the factors that are relevant to the district's proposal or refusal. **34 CFR 300.508(e).**

Step 3: Address any objection to the notice. The district's response also may include an objection that the parent's notice was insufficient. This objection must be filed within 15 days of receiving the hearing notice. **34 CFR 300.508(d)(1).**

► **Advocacy Hint: Be thorough up front.** It is imperative that the due process notice clearly describe all the issues you are attempting to resolve. You will not be allowed to raise issues that are not described in the notice. Although there are procedures for amending the notice, there is no guarantee that you will be allowed to do so.

For guidance on writing due process hearing notices, see Wrightslaw's "Letter to a Stranger" at: http://www.wrightslaw.com/advoc/articles/Letter_to_Stranger.html.

Step 4: Arguing about/amending the notice. If the non-complaining party objects that the due process complaint notice is not complete, the hearing officer has to, within 5 days of such notice, make a ruling regarding the adequacy of the due process complaint notice. **34 CFR 300.508(d)(2).**

If the hearing officer determines that the due process complaint notice is inadequate or the party seeking the hearing wants to amend the notice, there are procedures outlined for doing so. A complaint notice can only be amended if:

- ◆ the other party, in writing, consents to the amendment of the notice and is given the opportunity to resolve the dispute through the "resolution session" (discussed below); or,
- ◆ the hearing officer grants permission to amend the notice. The hearing officer may allow amendment right up to five days before the hearing. **34 CFR 300.508(d)(3).**

Once the notice is amended, the applicable timeline for the due process hearing recommences, including the timeline for the "resolution session."

Step 5: Mandatory resolution session. Prior to the opportunity to proceed with the due process hearing, the district must convene a meeting with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the complaint. This meeting is known as a "resolution session". **34 CFR 300.510.**

The meeting must be convened within 15 days of receiving the parent's due process hearing notice. The meeting must include a representative of the agency or district who has decision-making authority. The school district's attorney may not be present unless the parent brings an attorney. The purpose of the meeting is to have the parent(s) of the child discuss their complaint and the facts upon which it is based and allow the district the opportunity to resolve the complaint.

The meeting can be waived if both parties, in writing, agree to waive the resolution session meeting or use the mediation process.

If the parent(s) and district can resolve the problem at the resolution session, the parties

must execute a legally binding settlement agreement. The agreement must be signed by the parent(s) and a representative of the agency or district who has the authority to bind the agency or district. This agreement is enforceable in court. A settlement agreement reached as a result of the resolution session can be voided by any party within three business days of the agreement's execution. **34 CFR 300.510(e).**

► **Advocacy Hint: How do I enforce an agreement?** MDE may, but has not yet, elected to make other forms of dispute resolution available to resolve conflicts over agreements reached in resolution sessions. **34 CFR 300.537.** Until MDE does so, the federal law appears to permit enforcement of resolution session agreements only by going to court.

If the district does not resolve the problem within 30 days of the receipt of the complaint, the due process hearing may occur. It is only then that the applicable timelines for the due process hearing commence. **34 CFR 300.510(b).**

Due Process Hearing Rights

If neither mediation nor the resolution session resolves the issues raised in the due process complaint notice, then the parties can proceed to hearing.

Subject matter of hearing. The subject matter of hearing is restricted to the issues raised in the due process complaint notice. Only if the other party consents, can any additional issues be raised. **34 CFR 300.511(d).**

The hearing officer. Hearings are conducted by administrative law judges (ALJs) employed by the State Department of Licensing and Regulatory Affairs. The administrative law judge must possess:

- ◆ Knowledge of, and the ability to understand, the IDEA, its regulations, state regulations, and interpretation of IDEA rendered by state and federal courts;
- ◆ Knowledge and ability to conduct the hearing in accordance with appropriate, standard legal practice; and,
- ◆ Knowledge and ability to render and write decisions in accordance with appropriate legal practice. **34 CFR 300.511(c).**

Every due process hearing must be conducted according to rules, regulations, and procedures of both federal and state law.

- ◆ Any party has a right to be accompanied and represented by counsel, to present evidence, and to obtain a written or electronic copy of the decision and record. **34 CFR 300.512(a).**
- ◆ Any party has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed AT LEAST FIVE DAYS before the hearing. **34 CFR**

300.512(a)(3), (b).

► **Advocacy Hint: Disclose evaluations and recommendations.** It is never a good idea to withhold evaluations/documents you want to use at the hearing from the five day exchange, since failure to disclose such evaluations could result in the ALJ barring the introduction of evaluations unless the other party consents. **34 CFR 300.512(b).** Also, remember that this rule does not require school districts to provide the entire file to the ALJ unless you request it. It is always a good idea to review your child’s file before a hearing and make sure all the important documents are included in the documents given to the ALJ.

- ◆ The student who is the subject of the hearing has the right to be present at the hearing and may open the hearing to the public. **34 CFR 300.512(c).**

► **Advocacy Hint: Private or public?** Because of a desire for privacy, the parent may wish to have a hearing closed to the public. The parent, however, should realize that this will restrict the number of people the parent may have present. In a closed hearing, only parents, the student, school officials, and advocates may be present. Others may attend only if both parties agree.

- ◆ The parent or parent representative has the right to obtain a copy of the record and decision at no charge. **34 CFR 300.512(c).**

► **Advocacy Hint: Get it in writing.** Obtaining a written hearing decision is crucial in order to understand the basis of the ALJ’s decision and identify any possible issues for appeal to court.

Placement During the Hearing Process

The school may not change the placement of a student during any administrative or judicial proceeding unless the parents and the school agree. **34 CFR 300.518(a).** If the hearing involves an application for initial admission to a public school and parental consent is obtained, the student must be placed into the public school until the completion of all administrative and judicial proceedings. **34 CFR 300.518(b).**

See the Chapter 11 on “Suspensions and Expulsion” for special rules governing alternative placements in specific disciplinary actions.

Termination of the Hearing Process

Sometimes, through mediation or negotiation, an agreeable solution may be reached before the hearing process is exhausted. State regulations provide that the hearing or appeal procedure may be suspended, delayed, or terminated at any point upon written stipulation

(statement) by the parent and school, prior to the appointment of the ALJ. After appointment of the ALJ, the hearing may be terminated by stipulation between the district and the parent; however, delays, suspensions, or adjournments require ALJ approval.

The Hearing Decision

The administrative law judge must render a decision not later than 45 days after the timeline for the resolution session ends. **34 CFR 300.515(a)**. The ALJ may grant specific time extensions at the request of either party. **34 CFR 300.515(c)**.

Discipline disputes are addressed through “expedited hearings.” An expedited hearing must be held within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing. **34 CFR 300.532(c)**.

The ALJ’s decision must be made on *substantive grounds* on a determination of whether the child received a free appropriate public education. If procedural violations are alleged, the hearing officer may find that a child did not receive a free appropriate public education *only if* the procedural inadequacies:

- ◆ impeded the student’s right to a free appropriate public education;
- ◆ significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the student; or,
- ◆ caused a deprivation of educational benefits. **34 CFR 300.513(a)**.

► **Advocacy Hint: But they broke the law!** Many parents’ complaints focus on a school’s compliance with procedural rules. IDEA outlines the right of parents to file a compliance complaint with MDE, or to ask a hearing officer to order compliance with procedural rules. It states clearly, however, that procedural violations by themselves do not automatically mean a school district is not providing a free appropriate public education. In general, it is always a good idea to ask, when you think a school district has violated an IDEA procedural rule, what impact the violation has on your child’s education.

Appealing the Administrative Law Judge's Decision

If you disagree with an ALJ’s decision, you must appeal to court by filing a civil lawsuit. The suit may be filed in state or federal court. **34 CFR 300.516(a)**. The IDEA regulations include a statute of limitations for filing appeals to court. Appeal to a federal district court or a court of competent jurisdiction must be filed within **90 days** of the hearing officer’s decision. **34 CFR 300.516(b)**.

Attorneys' Fees

Attorneys' fees and related costs may be awarded to students' attorneys in cases where students prevail in due process hearings or in court actions to enforce rights under IDEA. **34 CFR 300.517(a)**. There are a number of limitations on the collection of fees. For example, attorneys' fees may not be awarded if a student's attorney fails to respond promptly to a reasonable settlement offer and may not be awarded for representation in most IEP Team meetings or mediation conferences. **34 CFR 300.517(c)(2)**. Attorneys' fees may be reduced if the student's attorney fails to give proper notice in the due process hearing request, if the attorney unreasonably delays resolving the conflict, or if the time spent or hourly rate billed are excessive. **34 CFR 300.517(c)(4)**. Despite these limitations, making attorneys' fees and costs available to students' attorneys may help encourage private attorneys to represent students with disabilities in due process hearings.

► **Advocacy Hint: Prevailing in court action or hearing only.** Parents are not entitled to receive attorneys' fees for reaching favorable settlements or agreements. Fees are only available in actions where there is a favorable finding by a court or hearing officer. **See T.D. v. LaGrange School District No. 102, 349 F.3d 469 (7th Cir. 2003); Buckhannon v. West Virginia DHHR, 121 S.Ct. 1835 (2001)**. This does not mean, of course, that attorneys' fees cannot be negotiated as part of a settlement agreement.

A court, at its discretion, may award attorneys' fees to a state or local educational agency against the *attorney of a parent* who files a complaint or subsequent cause of action which is (or becomes) frivolous, unreasonable or without foundation. A court, at its discretion, may award reasonable attorneys' fees to a State Education Agency (SEA) or Local Education Agency (LEA) against the *attorney of a parent, or against the parent*, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, or cause unnecessary delay, or to needlessly increase the cost of litigation. **34 CFR 300.517(a)**

► **Advocacy Hint: This is yesterday's news.** Under Rule 11 of the Federal Rules of Civil Procedure, anyone (including parents or school districts) can collect fees from a party when the party's claims are frivolous, unreasonable, without foundation, or presented for an improper purpose. **See Christianburg v. EEOC, 98 S.Ct. 694 (1978)**. Parents should evaluate their claims continuously to make sure that their claims are not frivolous, unreasonable, or without foundation. DRM urges parents to review their retainer agreements carefully to see if the retainer agreement contains any fee shifting arrangement. Parents should also be wary of school districts who suggest that they have an automatic right to attorneys' fees as a way of dissuading parents from asserting their due process rights. Such threats would chill the right of parents to participate in educational decisions and might give rise to civil rights claims.

Mediation

Mediation is different from hearings. In a hearing, the hearing officer makes a decision that is imposed on the two disputing parties. The role of the mediator is to facilitate the two parties in reaching their own decision.

Professional mediation of conflicts between parents and special educators can preclude the need for many special education due process hearings. Mediation is also more informal and easier than hearings.

Any party to a hearing may request mediation at any time. Participation in mediation is voluntary. The mediator must be acceptable to both the parent and the school. Mediation may not be used to delay a hearing, except by mutual agreement of the parties and approval of the hearing officer.

Parties to mediation retain the right to take other action if mediation fails to achieve a settlement.

► **Advocacy Hint: Mediation is available any time.** Although mediation occurs most frequently in the midst of due process hearings, it is available at any time to address any dispute in the provision of special education services, including complaint issues. Remember, though, that either party may decline mediation.

Mediation is free of charge to parents. **34 CFR 300.506(b)(4)**. MDE Special Education Mediation Services offers free mediation to help parents and schools explore options to meet student needs (<https://mikids1st.org/>). Michigan has a series of Community Dispute Resolution Centers throughout the state with trained mediators to handle many kinds of disputes, including special education issues. A number of private mediators also accept assignments in such cases.

If the parent(s) and district are able to resolve the complaint as a result of mediation, the parties must execute a legally binding settlement agreement. The agreement must be signed by the parent(s) and a representative at the agency or district who has the authority to bind the agency or district. This agreement is enforceable in court. (See prior comments about resolution sessions.)

► **Advocacy Hint: It's a contract.** The agreement that is signed by the parties is, in essence, a contract. If either party fails to follow the terms of the agreement, the agreement can be enforced through legal action. This is a boon in getting the district to do its part, but it can also lead to trouble if the parent has responsibilities under the agreement and fails to follow the terms specified. It also can act to waive certain special education rights. Please review the agreement carefully and understand its implications before you sign the document. DRM strongly advises parents to contact legal counsel prior to signing the agreement.

Appendix 8-1

Common Problems and Solutions

“The school says my doctor’s letter is not enough.” This problem surprises many professionals from other systems who make diagnoses and expect them to automatically result in special education eligibility. Most special education categories are defined legally, not clinically, and even disabilities that fit special education eligibility criteria must have a demonstrated impact on education.

To resolve this problem, ask the clinician or evaluator to explain if and how a child’s diagnosis fits into a special education classification when making any diagnosis or recommendation.

“I don’t agree with what the school district’s evaluator said.” It is important to identify the reason for disagreement. Standardized tests often may not be retaken immediately because of “practice effects” associated with some. In those cases, ask a clinician with comparable qualifications to review the testing.

More commonly, however, there may be disagreement with the interpretation of test results, observations, record review, or conclusions reached by evaluators. The easiest way to resolve this problem is to ask the evaluator to explain his or her findings. The IEP team must include a person who is knowledgeable about any evaluations conducted and can answer questions about them. If, after the explanation, there is still disagreement with the evaluation, a parent may request an independent evaluation.

“The school said my child is not eligible.” Sometimes a school district may only look at one or a few eligibility categories, such as specific learning disability. The district may do this because specific learning disability is the largest category of eligibility. In some isolated instances, a school district may even attempt to make an eligibility determination without an evaluation and discourage a parent from requesting an evaluation.

The law assures the right to seek an evaluation in all suspected areas of disability and does not allow school districts to prescreen applicants. To resolve this problem, ask the school district to evaluate for eligibility for all suspected areas of disability under IDEA, state law, and Section 504.

“The school says I should not ask for special education eligibility because my child would have to go to a special education class or school.” Some schools think that special education is a place and that eligibility for special education automatically requires moving a child into a special education program. Sometimes these assumptions are driven by how special education services are funded, a practice that violates IDEA. Other times, they are driven by misperceptions about the nature of special education services and supports.

To resolve this problem, ask for an evaluation, then advocate for individualized support. Consider beginning the discussion by assuming that the child will attend school in general education with supports, then move to more restrictive placements only if absolutely necessary.

“The school never acted on my verbal evaluation request.” In most cases, timelines don’t begin until the school receives a written request to do something. This creates particular problems for children in foster care who move from one district to another, as any delay in acting upon an evaluation request may result in no services or supports being provided.

If communicating with the district in writing creates an overly formal relationship, one way to address this problem is to call the district, make the request, and then follow up with a letter or note.

“The school won’t implement my child’s IEP when I move into a new district.” When a child with an IEP moves into a new district, the new district must do one of two things: (1) implement the IEP as written with similar or comparable services; or, (2) convene a new IEP team meeting and write a new IEP. As a practical matter, transfers often slow down services because of delays in transmitting records.

To help resolve this problem, work with the parent to request an inspection of the child’s file and obtain a copy of the child’s current IEP and most recent evaluation report.

“The school won’t give my child the services or supports she needs.” One of the most overlooked problems with IEPs is the failure to include robust, up-to-date, and measurable goals. Services and supports must be designed to meet an IEP goal. IEP goals are in turn derived from the present level of academic achievement and functional performance (PLAAFP) and, to some extent, are tied to the general curriculum standards set by the state that apply to all students.

To address this problem, check the IEP goals to make sure they are current, robust, and measurable. Check the Michigan Department of Education’s grade level content expectations for various subjects and grade levels at www.michigan.gov/mde to see if a goal is strong enough. To be sure that a goal is measurable, apply the “stranger test,” i.e., whether a total stranger would be able to tell, based on performance, that the child is making progress. The goals and objectives should not be written using words like “improve” or “increase.”

“I don’t agree with the way the school is teaching my child.” This problem may show up because the school is not using a preferred teaching method, or because the child is not learning under the current method.

Methodology is the school’s choice, but it must be reasonably calculated to help a child learn based on his or her individual needs and must be, to the extent practicable, based on peer-reviewed research.

Progress should be more than minimal. To resolve this problem, schedule regular reviews to discuss progress, and insist on different methods if current ones don’t work.

“The school will not write a service or accommodation into an IEP.” When a service is included in an IEP, the parent has an enforceable claim to receive the service. A few school districts mistakenly believe that refusing to write a service into an IEP relieves them of responsibility for providing the service. Such a practice is contrary to federal law.

If persuasion doesn’t work, use the complaint process discussed in the following section to argue that the school is not following the IEP process.

“The school is not providing a service in my child’s IEP.” Usually this problem comes from a lack of staff or from not providing information to staff about the child’s service and program needs. Although these reasons may be honest explanations for the failure to provide IEP services, neither of them can excuse the school from providing the services.

To resolve this problem, try some informal methods of resolving the problem before filing a formal complaint. Start by talking to someone who has the authority to change the situation. Remember that while many people on the general education staff (such as school principals and counselors) deal with special education issues and students, they may not have the expertise or authority necessary to resolve complaint issues and occasionally do not recognize them.

Next, try to contact the school district’s special education director, supervisor, or coordinator to discuss the problem. If the problem is not resolved, contact the person at the Intermediate School District (ISD) or the Michigan Department of Education (MDE) responsible for investigating complaints. This will likely be either the person in charge of compliance and monitoring or in some cases the ISD special education director.

If a formal complaint is necessary, send a copy to the local school district as well as to MDE. Occasionally, when a formal complaint is filed, the investigator will ask if they can try to resolve the complaint informally. This may be a good idea but consider whether resolving the complaint informally will provide the same outcome for the student within the same timelines.

Complaints about problems with a Section 504 plan should be filed with the U.S. Office for Civil Rights. 504 complaints must be filed within 180 days of the event that you are complaining about. Unlike IDEA complaints, there are no formal timelines on investigation of such complaints.

“My child is starting to have behavior problems and the school keeps suspending him.” Behavior issues may not be reflected in the PLAAFP, or there may not be IEP goals for behavior, or there may not be an appropriate behavior assessment or plan. To resolve this problem, ask for an IEP meeting or for a functional assessment of behavior and behavior support plan before the problem gets worse. It’s especially important to resolve behavior issues early, because the 2004 changes in the law make it much more difficult to challenge the adequacy of a program in a manifestation review.

“The school will not write behavior goals unless the child is labeled as emotionally impaired.” This myth is an extension of the mistaken belief that a school must only meet a child’s needs that come from the category of eligibility under which the child falls. To resolve this problem, ask the IEP team to describe present levels of performance in all areas of disability and write goals that completely identify the child’s needs.

Appendix 8-2

Sample Request for a State Complaint Investigation

[Note: This sample format is adapted from MDE-OSE's Request for a State Complaint Investigation form and completed to demonstrate how to connect the facts to allegations in a state complaint. You may fill out MDE-OSE's form and print it to mail or fax, or save and email the complaint to MDE-OSE at : MDE-MIComplaints@michigan.gov

The English and Spanish version of the complaint form can be found here:

English -

https://www.michigan.gov/documents/mde/StateComplaintModelForm_727378_7.pdf.

Spanish - https://www.michigan.gov/documents/mde/StateComplaintModelForm-Spanish_735077_7.pdf

Complainant (Person filing the complaint and contact information)

Name: Kerry Edison

Address: 2315 West Mahogany Cir.

City/State/Zip: Squirrel, MI 48378

Telephone: 248-867-5309

Email: k.edison@yahoo.com

Describe Complainant's relationship to Student: (example: Parent, Citizen, Attorney, Advocate)

The district the complaint is against

Name of District: Tree Grove School District

Address: 1489 Oak Tree Blvd., Squirrel, MI 48378

Name of Building the Student is Attending: Maple Lane Elementary

The student involved

Name of Student: Thomas Edison

Date of Birth: 10/08/2012

Home Address: 2315 West Mahogany Cir.

City/State/Zip: Squirrel, MI 48378

Allegations

Number and list each alleged violation of IDEA or MARSE separately. Write out what the alleged violation of IDEA or MARSE is and use specific facts to explain and show the violation. Include as many details as possible like names, dates, locations. You can include attachments such as documents from the school, emails, or text messages that provide more information or support the allegations and facts.

1. The school didn't evaluate my child every 3 years. My son's IEP says that last three-year evaluations were March 9, 2015.
2. The school didn't implement my son's IEP. My son is supposed to have 30 minutes of social work services 2-4 times a month. I asked my son if he has met with the social worker, Jessica Wong, and he said no. On November 2, 2020, I emailed the school to ask if the social worker was meeting with my son. The special education director, Sofia Reynolds said that they haven't had a social worker at the school since February 2020, so no one is getting social work services. It's November 2020, so my son hasn't gotten social work services for 7 months, not including the summer.
3. The school suspended my son for over 10 days for things he did because he has Autism, but didn't hold a manifestation determination review. My son is working on using words more when he gets mad, but he doesn't like to change to new activities. He also hates when people touch him, and I told the school this. School started on September 8, 2020. On September 10, the principal, Tyson Sanders, called me to pick up my son and asked me to keep him home on September 11 too. They said it wasn't really a suspension, but just a break since he got very upset in class and threw pencils and a book at the teacher. On September 16, my son started screaming at other students in the cafeteria. When the paraprofessional, Jamie Neil, came to check on him, he patted my son on the back and my son hit Mr. Neil. The principal called and said my son was suspended for 3 days for hitting the paraprofessional. On October 23, my son was in his classroom, finishing up a project. Mr. Neil told him to stop, and when my son wouldn't stop working, the Mr. Neil took the paper away from my son and put it on the teacher's desk. When my son tried to get the paper back, the paraprofessional stepped in front of my son to block him and started yelling at my son. My son started yelling back and swinging at the paraprofessional. The principal called and said that my son was suspended until we got an outside therapist to say he was safe to be in school. No schoolwork has been sent home. We haven't had an IEP meeting to talk about what the school can do to help my son. I don't know what therapist can say that he is safe to return to school. It's been 3 weeks, and the school hasn't said anything else about my son returning to school. I emailed Mr. Sanders to ask why I haven't heard anything. Mr. Sanders said he was waiting to see the therapists' evaluation. I told Mr. Sanders I don't know where to find a therapist. I included the emails as an attachment.
4. The school didn't meet for an IEP meeting or change the IEP when my child started having behavior problems in school. The school has still not met for an IEP meeting even though he started having behavior issues at the beginning of the year. Then the school asked me to pick him up and keep him home September 10-11, suspended him September 16-18, and then told me to keep him home from October 23 until I could find a therapist to evaluate him. Between September 18 and October 23, the school called me almost every day about my son's behavior issues. I've included the

Disability Rights Michigan

18 behavior sheets the school sent home. I've called the school and talked to the secretary, Mrs. Gonzalez. She says that Mr. Sanders will call me back.

Proposed Resolution

What would you like to see the school do as a result of the complaint?

I want the school to re-evaluate my son in all areas of suspected disability. I want them to return him back to school and give him behavior supports he needs. I think he has sensory issues, so I want a sensory evaluation. I want extra time for him with a social worker and special education teacher, so he can get caught up on all the work he missed. The school should hold a manifestation determination review and figure out why my son is having such a hard time in school. I want the school to figure out how to help my son learn in school.

Submit Form This state complaint investigation request must be signed and mailed or faxed to:

Michigan Department of Education Office of Special Education
608 West Allegan P.O. Box 30008
Lansing, MI 48909
Fax: 517-241-7141
MDE-MIComplaints@michigan.gov

Kerry Edison

December 2, 2020

Signature (required)

Date

***If the person filing the complaint is not the student's parent, or if the student has reached age 18, then the student's parent or the 18-year-old student must sign a release, so MDE-OSE can correspond with the complainant.

Appendix 8-3

Section 504 Letter Of Complaint

(Be sure to keep a copy for your records.)

(Date)

Office for Civil Rights, Cleveland Office
U.S. Department of Education
1350 Euclid Ave., Suite 325
Cleveland, Ohio 44115-1812

RE: Edward Davis

Dear Sir or Madam:

The purpose of this letter is to make a formal complaint to you concerning the actions of the () Intermediate School District and the education of my son, Edward Davis. The main facts of the complaint are as follows:

1. Edward is a 14-year-old boy with mild cognitive impairment who lives with me in the () School District.
2. () School District has excluded Edward from participation in his vocational education and physical education classes and failed to provide him with prescribed speech therapy.
3. On (date), the Individualized Education Program Team (IEP Team) met to develop Edward's Individualized Education Program (IEP) for the coming school year when he would be entering Smith Junior High School. The IEP Team agreed that Edward was ready to enter the vocational education program. The IEP Team also agreed that he should continue to receive speech therapy three times a week for fifty minutes a session.
4. On (date), three weeks after school started, I learned that Edward had been dropped from his vocational education and physical education classes and that he would not be receiving any speech therapy this year. On (date), Ms. Edith Jones, Edward's counselor, called to tell me that Mr. Clark, the principal, and Mr. Smith, the teacher of the vocational program, had met the day before to discuss the problems Edward was having in classes. Ms. Jones told me that Edward had been teased and picked on by the other boys in his P.E. and shop classes. These problems were disrupting the classes.
5. The IEP Team did not meet until (date). I said that Edward should be let back into the vocational education and physical education classes. I argued that he should not be punished for the behavior of the other students. Mr. Clark and Mr. Smith insisted that his presence was the source of the problem and they could not stop the other students' teasing. Mr. Clark also said he was sorry, but the school board had cut back on special education funding and there was no more money available to pay for

Disability Rights Michigan

speech therapy for students in the junior and senior high schools. Edward's IEP was changed to reflect the actions taken by the principal. I indicated my opposition to the school's actions on the IEP. I also insisted that the reasons given for the removal from the classes and denial of speech therapy be included in the IEP.

6. Since (date), Edward has not been going to his vocational education class. Instead, he has been placed in the study hall. He has not received any speech therapy since the school year began.
7. I believe that the school district's actions violate the Section 504 and IDEA regulations and my son's right to an appropriate education.
8. I request that you investigate the actions of (_____) School District and order the district to put Edward back into his vocational education and physical education classes and to give him the prescribed speech therapy. To assist you in your investigation, I will be happy to share with you all relevant documents from my file and put your investigators in touch with other persons who have pertinent information. The following individuals are responsible for the actions complained of:
Mr. Clark Principal; Ms. Edith Jones, Counselor; ISD, 123 Main Street, My City, MI, (517) 444-3693
9. I expect that the Office for Civil Rights will keep me informed of any actions taken about this complaint, including providing copies of any written findings. I also expect that OCR will promptly acknowledge receipt of my letter and that it will immediately begin an investigation. I intend to keep the Washington Office for Civil Rights informed if there are delays in the investigation of this complaint.

Sincerely,

(Names of Parents)

(Address)

(Telephone Number)

cc: U.S. Department of Education
Office for Civil Rights
400 Maryland Ave., S.W.
Washington, DC 20202-1100

Appendix 8-4

Follow Up Letter To OCR

(Be sure to keep a copy for your records.)

(Date)

Office for Civil Rights, Cleveland Office
U.S. Department of Education
1350 Euclid Ave, Suite 325
Cleveland, Ohio 44115-1812

Dear Sir or Madam:

On (Date), I filed a complaint with your office charging that () School District had discriminated against my child on the basis of his disability in violation of Section 504 and IDEA. However, I have not received a letter acknowledging my complaint and saying when your office will begin an investigation of my complaint.

My child, (), is being denied urgently needed services. Please let me know by (date) when your investigation will begin.

Sincerely,

(Your Name)

(Your Address)

(Your Telephone Number)

cc: U.S. Department of Education
Office for Civil Rights
400 Maryland Ave., S.W.
Washington, DC 20202-1100

Appendix 8-5

U.S. Department of Education Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education

The complete document can be found at:

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/accombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

July 23, 2013

Contact Person: Gregg Corr

Telephone: 202-245-7309

OSEP MEMO 13-08

MEMORANDUM

TO: Chief State School Officers
State Directors of Special Education

FROM: Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

SUBJECT: Dispute Resolution Procedures under Part B of the Individuals with
Disabilities Education Act (Part B)

The purpose of this Memorandum is to introduce the updated and combined question and answer (Q&A) document on the dispute resolution procedures that are set out in the Part B regulations, published in the Federal Register on August 14, 2006, including mediation procedures (34 CFR §300.506), State complaint procedures (34 CFR §§300.151-300.153), and due process procedures (34 CFR §§300.507-300.516 and 300.532-300.533). The Office of Special Education Programs (OSEP) encourages parents and local educational agencies (LEAs) to work collaboratively, in the best interests of children, to resolve the disagreements that may occur when working to provide a positive educational experience for all children, including children with disabilities. To this end, the IDEA and its implementing regulations provide specific options for resolving disputes between parents and public agencies, which can be used in a manner consistent with our shared goals of improving results and achieving better outcomes for children with disabilities.

Disability Rights Michigan

The attached Q&A document provides responses to frequently asked questions to facilitate and enhance States' implementation of the Part B dispute resolution procedures. The Q&A document incorporates prior clarification of the requirements of Part B of the IDEA and the Part B regulations that OSEP has provided on the dispute resolution procedures in policy memoranda, Q&A documents, letters responding to individual requests for policy clarification, and responses to public comments published in regulatory notices in the Federal Register. Three previous memoranda are being updated and reissued at this time as part of the Q&A document: OSEP Memorandum 94-16 issued on March 22, 1994; OSEP Memorandum 00-20 issued on July 17, 2000; and OSEP Memorandum 01-5 issued on November 30, 2000. Some of the questions and answers in the Q&A document were previously contained in *Questions and Answers on Procedural Safeguards and Due Process Procedures For Parents and Children with Disabilities*, January 2007, updated June 2009. These questions have been revised, amended, and updated, as appropriate.

The Q&A document consists of five sections: mediation; State complaint procedures; due process complaints and due process hearing procedures; resolution process; and expedited due process hearings.

As part of its general supervisory responsibility, a State educational agency (SEA) must ensure implementation of IDEA's dispute resolution procedures in a manner that meets the requirements of the IDEA. OSEP encourages States and their public agencies to work cooperatively with parents to attempt to address their differences through informal means whenever possible. However, when those informal means prove unsuccessful, States should recognize the benefits of encouraging their public agencies to voluntarily engage in mediation with parents, consistent with 34 CFR §300.506. Also, since the inception of the Part B program in 1977, State complaint procedures have provided a very effective and efficient means of resolving disputes between parents and public agencies, without the need to resort to more formal, adversarial, and costly due process proceedings.

Sections A and B of the Q&A document provide guidance on mediation and State complaint procedures, respectively. Section C of the Q&A document describes procedures for due process complaints as well as procedures for due process hearings when the dispute between the parents and the public agency cannot be resolved through informal means, through mediation, or through the resolution process. Even when resorting to IDEA's due process procedures becomes necessary, States and their public agencies should focus on ways to resolve the dispute with parents as early as possible at the local level. Therefore, appropriate use of the resolution procedures, described in Section D of the attached Q&A document, provides an effective and efficient way of resolving disputes at the local level when a parent files a due process complaint. Section E of the Q&A document addresses procedures for expedited due process hearings when a parent or a public agency files a due process complaint regarding a disciplinary matter.

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This Memorandum and the attached questions and answers are available at <https://sites.ed.gov/idea/> and <https://www2.ed.gov/about/offices/list/osers/osep/policy.html>.

We hope that you find this information helpful. If you or members of your staff have questions, please contact Gregg Corr or your State Contact in OSEP's Monitoring and State Improvement Planning Division.

Thank you for your continued commitment to improving results for children and youth with disabilities and to ensuring that the rights of children and their parents are protected.

Attachment

QUESTIONS AND ANSWERS ON IDEA PART B DISPUTE RESOLUTION PROCEDURES

Revised July 2013

Regulations for Part B of the Individuals with Disabilities Education Act (IDEA) were published in the *Federal Register* on August 14, 2006, and became effective on October 13, 2006. Supplemental IDEA regulations were published on December 1, 2008, and became effective on December 31, 2008. Since publication of the regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as other important issues arise or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide parents, parent training and information centers, school personnel, State educational agencies (SEAs), local educational agencies (LEAs), advocacy organizations, and other interested parties with information to facilitate appropriate implementation of the IDEA dispute resolution procedures, including mediation, State complaint procedures, and due process complaint and due process hearing procedures. This Q&A document represents the Department's current thinking on these topics. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations. Further, this document pertains only to IDEA Part B and is not meant to interpret Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990.¹

This Q&A document updates and revises, as appropriate, the Department's guidance, entitled *Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities* issued in January 2007 and revised in June 2009. This Q&A document also updates and revises the information and questions and answers contained in the following Office of Special Education Programs (OSEP) Memoranda: 94-16, *Complaint Management Procedures Under Part B of the Individuals with Disabilities Education Act - Public Law 101-476 (Part B)*, issued March 22, 1994; 00-20, *Complaint Resolution Procedures under Part B of the Individuals with Disabilities Education Act (Part B)*, issued July 17, 2000; and 01-5, *Questions and Answers on Mediation*, issued November 30, 2000. This Q&A document replaces the previously issued OSEP Memoranda and Q&A document.

Generally, the questions and corresponding answers presented in this Q&A document required an interpretation of the IDEA and its implementing regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in

¹ For more information about these laws please contact the Office for Civil Rights Enforcement Office that serves your State. Contact information for these offices can be found at: <https://ocrcas.ed.gov/contact-ocr>

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the context of the specific facts presented and are not legally binding. However, where controlling case law on these issues exists in your jurisdiction, it generally would be legally binding. The Q&As in this document are not intended to be a replacement for careful study of the IDEA and its implementing regulations or of controlling case law. The IDEA, its implementing regulations, and other important documents related to the IDEA are found at <https://idea.ed.gov>.

If you are interested in commenting on this guidance, please email your comments to OSERSguidancecomments@ed.gov and include Dispute Resolution Procedures in the subject of your email or write us at the following address: Gregg Corr, U.S. Department of Education, Potomac Center Plaza, 550 12th Street, S.W., Room 4108, Washington, D.C. 20202.

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