

Comparison of the Special Education Problem Solving Options

WHAT KINDS OF ISSUES CAN BE RESOLVED?

Informal Meeting	Mediation	State Complaint	Due Process Hearing
Any issues	Any special education issue Issues related to communication and relationships	Alleged violations of the IDEA Alleged violations of the MARSE Alleged violations of the Michigan Law	Provision of a FAPE; issues regarding the identification, evaluation, or placement of a student with a disability Some disciplinary issues

IDEA=Individuals with Disabilities Education Act

FAPE=Free Appropriate Public Education

MARSE=Michigan Administrative Rules for Special Education

WHO MAY MAKE A REQUEST?

Informal Meeting	Mediation	State Complaint	Due Process Hearing
This is local problem solving, and there is no filing	Anyone Participants must agree to mediation	Anyone No matter who files the complaint, the school district is the respondent party in a state complaint	Parent or guardian Adult student Any public agency

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WHAT ARE THE PREPARATIONS?

Informal Meeting	Mediation	State Complaint	Due Process Hearing
	<p>MSEMP staff gathers information</p> <p>Parties determine desired outcomes for mediation and prepare for session</p>	<p>Complaint investigators assigned by the OSE and the ISD</p> <p>School district provides documents and information to the OSE within required timeline</p> <p>Complainant provides additional documents and information to the OSE</p>	<p>Filed with the OSE, and the complaint is referred to the MAHS</p> <p>MAHS appoints ALJ</p> <p>School districts must retain attorney; parents may retain attorney</p> <p>Research, organize, and prepare evidence (documents and witnesses) and legal information</p>

MSEMP=Michigan Special Education Mediation Program

OSE=Office of Special Education

ISD=Intermediate School District

MAHS=Michigan Administrative Hearing System

ALJ=Administrative Law Judge

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WHAT ARE THE ROLES OF THE PEOPLE INVOLVED?

Informal Meeting	Mediation	State Complaint	Due Process Hearing
Parties try to work out issues quickly and directly	<p>Mediator acts as an impartial negotiator, facilitator of communication</p> <p>Mediator guides process, maintains order of conference</p> <p>Mediator attempts to find areas of agreement; does not impose views or make decisions</p> <p>Mediator assists everyone in understanding the nature of their dispute; encourages future problem solving and reaching mutual agreement</p>	<p>The OSE and the ISD complaint investigators gather factual information about the allegations; determine whether federal law or regulation or a state law or rule has been violated</p> <p>Complaint investigators are objective fact-finders</p> <p>Complaint investigators are employees of the state, employees of an ISD, or under contract with the state or ISD</p>	<p>ALJ makes impartial decision and issues an order</p> <p>ALJ controls hearing; may question witnesses; may rule on objections</p> <p>ALJ decides in favor of one party or the other for each allegation</p> <p>ALJ is a neutral, third party; the ALJ is not an employee of the OSE or any school district; ALJs are employed with the MAHS to conduct special education hearings</p>

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WHAT IS THE PROCESS?

Informal Meeting	Mediation	State Complaint	Due Process Hearing
<p>Discussion between parties can take place any time before or during the process of a state complaint</p>	<p>Mediation can take place at any time before or during the process of a state complaint</p> <p>Process is facilitated in conference style by mediator</p> <p>Discussions are confidential and cannot be used as evidence in legal proceedings</p> <p>Each party may present views and hear opposing views in a joint session, then speak privately with the mediator</p> <p>Parties engage in negotiation and compromise; emphasis on underlying interests and solutions</p> <p>No formal record of proceedings</p> <p>If agreement is reached, mediator will prepare written agreement to be signed by the parties</p>	<p>Emphasis on fact-finding; compliance with state and federal laws</p> <p>Mediation and other resolution options encouraged throughout the resolution process</p> <p>The OSE and the ISD gather information from the complainant and the school district, review documents, and conduct interviews</p> <p>The OSE may conduct on-site interviews, but no formal record like in a hearing</p> <p>The OSE issues final decision to the parties</p> <p>If the school district is found to be fully compliant, the OSE will close the case</p> <p>The OSE orders corrective action if noncompliance is found</p>	<p>Legal hearing conducted by ALJ</p> <p>May have many participants and possibly, observers, if parent requests</p> <p>Resolution session required unless parties are in mediation or waive the resolution session</p> <p>Mediation and other resolution options encouraged early in the process</p> <p>Conducted in litigation style: opening and closing arguments, direct and cross-examination of sworn witnesses, introduction of evidence and exhibits, raising objections</p> <p>Parties attempt to convince ALJ of the merits of their case</p> <p>Emphasis on law and winning the case</p>

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WHAT IS THE PROCESS? *Continued*

Informal Meeting	Mediation	State Complaint	Due Process Hearing
	If agreement is not reached, parties can pursue other dispute resolution options	A state complaint may be filed at any time, but must be within one year of the alleged violation	Formal record of proceedings A due process complaint may be filed at any time within two years of the alleged violation

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WHAT ARE THE COSTS?

Informal Meeting	Mediation	State Complaint	Due Process Hearing
<p><u>Time:</u> Least amount of time</p> <p><u>Money:</u> Minimal expenses; may be able to arrange before or after work hours</p> <p><u>Emotions:</u> Direct resolution may be less emotionally draining</p>	<p><u>Time:</u> A few hours (or more) for preparation, typically 2-3 hours in one session; varies by participants</p> <p><u>Money:</u> Expenses of time lost from work, hiring a substitute teacher, child care costs; the cost of mediation is paid by the OSE</p> <p><u>Emotions:</u> Mediation may be emotionally draining but is less adversarial than a due process hearing and offers opportunities for non-legal issues to be resolved</p>	<p><u>Time:</u> Requires time to prepare materials and respond to allegations and possibly for an on-site investigation visit</p> <p><u>Money:</u> Expenses of time lost from work, hiring a substitute teacher, child care costs; parents may have child care costs</p> <p><u>Emotions:</u> Usually no opportunity for emotional issues to be resolved or for improvement in communication or relationships of the participants</p>	<p><u>Time:</u> Typically 50 to 100 hours of preparation, 2 or more days for the hearing</p> <p><u>Money:</u> Parties may be responsible for any or all of the following: time lost from work, witness expenses, expert witness fees, attorney's fees, administrative hearing fees, and transcript fees</p> <p>District may be required to pay parents' attorney fees if parents prevail; parents may, in limited circumstances, be required to pay district attorney fees</p> <p><u>Emotions:</u> Hearings are emotionally exhausting because they are lengthier and more adversarial; outcome is rarely satisfying to both, sometimes to neither party</p>

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WHAT ARE THE TIMELINES?

Informal Meeting	Mediation	State Complaint	Due Process Hearing
	<p>Mediation can usually be scheduled within 15 calendar days of the agreement to mediate</p> <p>Mediation can be scheduled before or concurrent with a due process hearing request or complaint</p>	<p>The OSE must resolve the complaint within 60 calendar days of receiving the complaint unless exceptional circumstances require additional time</p>	<p>The school district must schedule a resolution session within 15 calendar days of receiving the hearing request; the hearing and decision must be completed within 45 calendar days following the 30 calendar day resolution period unless the ALJ agrees to an extension at the request of a party</p> <p>The hearing and decision timeline may be shorter in cases that involve some disciplinary issues</p>

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WHO MAKES THE FINAL DECISIONS?

Informal Meeting	Mediation	State Complaint	Due Process Hearing
Parent and school district	Parent and school district	The OSE	ALJ with the MAHS

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WHAT IS THE FINAL PRODUCT?

Informal Meeting	Mediation	State Complaint	Due Process Hearing
Agreement may be written	<p>Signature on written agreement which indicates willingness to abide by agreement; parties have a stake in outcome and commitment to its success</p> <p>The agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States</p>	<p>The OSE issues final decision to the parties</p> <p>The OSE issues corrective action for noncompliance</p>	ALJ Decision and Order

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