



Due Process Complaint Filed by District

**Michigan Department of Education Office of Special Education
February 2022**

A due process complaint is submitted to the Michigan Department of Education (MDE) Office of Special Education (OSE) by mail, fax, or email. If the due process complaint contains all the required information, it is assigned a case number and forwarded to the Michigan Office of Administrative Hearings and Rules (MOAHR). The MOAHR assigns an Administrative Law Judge (ALJ) who determines whether a complaint is sufficient and is considered properly filed. For any complaint that involves a child with an Individualized Family Service Plan (IFSP), the MDE Office of Great Start/Early Childhood Development and Family Education is notified by OSE to ensure coordination and involvement of Individuals with Disabilities Education Act (IDEA) Part C staff in the process.

Due Process Filed by the District

- A district may file a due process complaint to request a due process hearing to override a parent's refusal to consent, or failure to respond to a request for consent, to conduct an initial evaluation or reevaluation of a child enrolled, or seeking to be enrolled, in a public school, including a public-school academy.
- A district must file a due process complaint to request an expedited due process hearing when the district unilaterally removes a student to an interim alternate education setting (IAES), without regard to whether the student's behavior was determined to be a manifestation of the student's disability, and when the district believes that maintaining the student's current placement is substantially likely to result in injury to the student or to others.
- A district must file a due process complaint to request a due process hearing when the district declines a parent's request for an independent education evaluation (IEE). The district must be able to demonstrate, to an ALJ, that the evaluation previously conducted was appropriate.

Resolution Session

A resolution session is not required when a due process complaint and request for hearing is filed by a district. However, the district is encouraged to schedule and participate in a resolution session to work toward an agreement and reestablish school-family relationships.

- When the dispute is resolved and an agreement between the parties is reached, the parties can request that the due process complaint be withdrawn, and the case will be closed.
- When the resolution session is not held or was held but an agreement between the parties was not reached, the ALJ will schedule a pre-hearing conference.
- Mediation is optional and can be held at any time up to the due process hearing. Mediation is a no-cost problem solving process that is used to resolve a dispute and is led by a trained, neutral, third-party.

Special Education Mediation Services (SEMS) can provide a neutral third-party facilitator for a resolution session when one is held, and both the parent and the district agree to use a facilitator.

The Due Process Hearing, Decision and Order

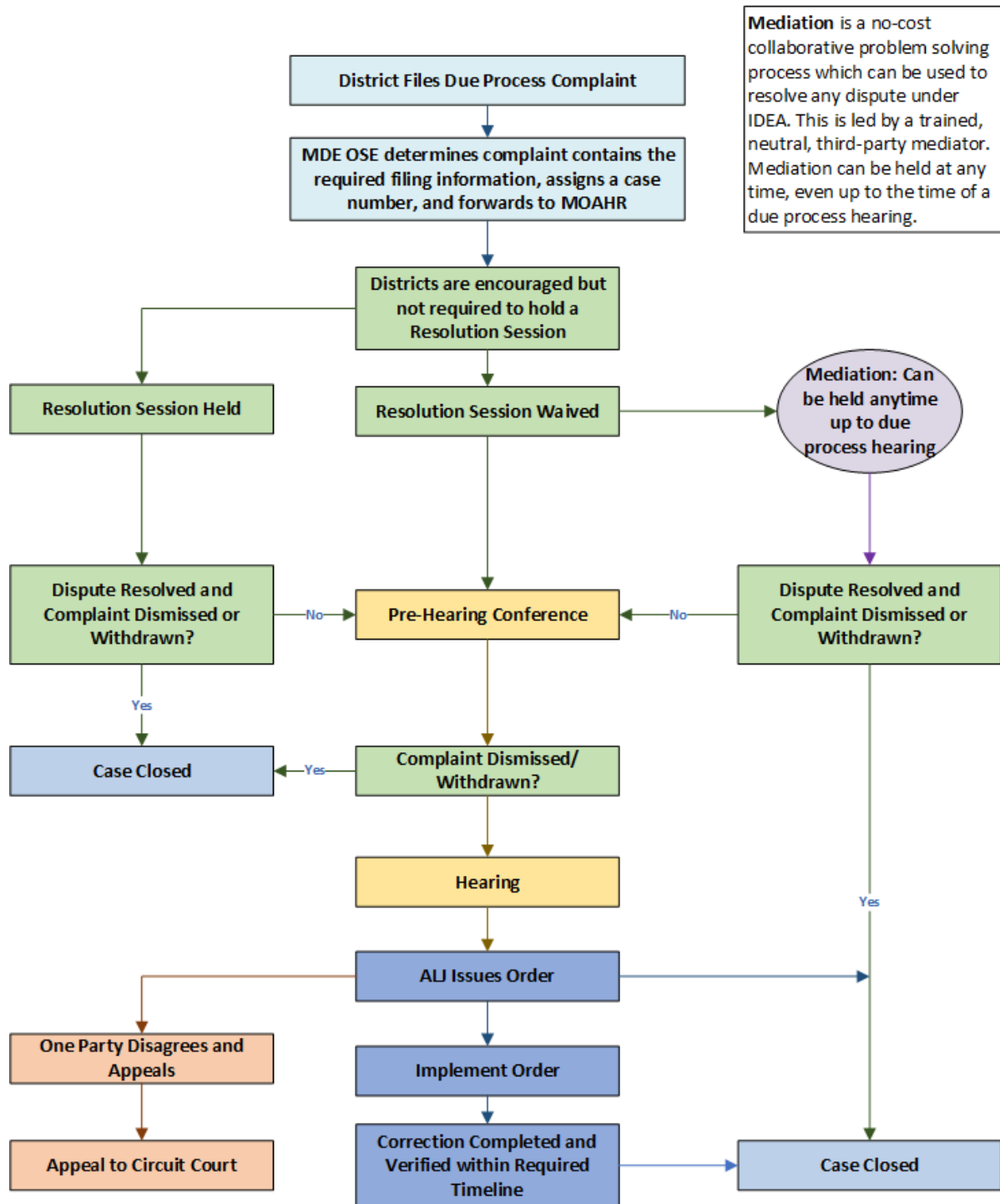
During the pre-hearing conference, which is a status meeting to clarify the issues and determine dates for the actual due process hearing, the parties will exchange witness lists and proposed exhibits.

At the due process hearing both parties will be heard, and a written decision will be issued by the ALJ.

- If the case is dismissed or withdrawn the case will be closed.
- If the ALJ issues a final decision and order regarding consent override, the ALJ will either order the district to conduct an evaluation within a timeline determined by the ALJ or will order the district not conduct an evaluation and the case will be closed.
- If the ALJ issues a final decision and order regarding the district's unilateral change of placement to an IAES, the ALJ may either order the student to remain in the IAES or order the student to return to the previous placement and the case will be closed.
- If the ALJ issues a final decision and order regarding a district's refusal to grant an IEE, the ALJ will either grant the parent's request for an IEE at public expense because the district's evaluation was not appropriate or will determine the agency's evaluation was appropriate and the parent still has the right to an IEE but not at public expense and the case will be closed.

If either party disagrees with the final decision and order, the party can appeal to a higher authority.

Special Education Due Process Procedure When District Files



Mediation is a no-cost collaborative problem solving process which can be used to resolve any dispute under IDEA. This is led by a trained, neutral, third-party mediator. Mediation can be held at any time, even up to the time of a due process hearing.

Questions?
 Contact the Information Line at 888.320.8384 or mde-ose@michigan.gov

Relevant Terms

ALJ - Administrative Law Judge means any person assigned by the hearing system to preside over and hear a contested case or other matter assigned, including, but not limited to, tribunal member, hearing officer, presiding officer, referee, and magistrate.

Appeal – A proceeding undertaken to have a decision reconsidered by a higher authority.

Case Dismissed – The due process complaint is removed from the court’s docket by the ALJ and closed.

Case Withdrawn – The due process complaint is removed from the court’s docket by the ALJ or complainant.

Corrective Action – If an ALJ issues a corrective action, proof of compliance must be provided to the Office of Special Education.

Expedited Hearing - An expedited due process hearing is a hearing involving a due process complaint regarding a disciplinary matter, which is subject to shorter timelines than a due process hearing conducted pursuant to 34 CFR 300.507 through 34 CFR 300.516.

Final Decision – A written decision which includes:

- Procedural History (date filed, dates of correspondence, hearing dates)
- Witness List (Individuals who testified at hearing)
- Exhibit List (student transcripts, student attendance records, IEP/IFSP)
- Issues (issue in dispute between parent and district that ALJ is addressed in hearing)
- Applicable Law (identify relevant IDEA regulations and MARSE rules)
- Findings of Fact (facts based on information presented. Can be documents, testimony and admitted exhibits)
- Conclusions of Law (applying regulations, rules, and case law to the particular facts of case. Provides a Summary of Conclusions)
- Order (decision based on the above information)
- Information about how to appeal the decision

Hearing – A hearing to address the issues in the dispute where both parties will be heard, and a decision will be made by the ALJ. When the case is dismissed or withdrawn the case will be closed. When a written decision is issued, the decision can include orders with or without corrective action.

MARSE - Michigan Administrative Rules for Special Education

MDE OSE – Michigan Department of Education Office of Special Education

Mediation - Mediation is a no-cost, collaborative, problem solving process, which can be used to resolve any dispute under IDEA. Mediation is led by a trained, neutral, third-party mediator. Mediation can be held at any time, even up to the time of a due process hearing.

MOAHR - Michigan Office of Administrative Hearings and Rules

Pre-hearing Conference - A hearing to clarify the issues in the complaint and determine dates for the actual Due Process Hearing, the parties will exchange witness lists and proposed exhibits.

Resolution Session - A resolution meeting is held when a parent files a due process complaint requesting a hearing against a school district. The district is required to contact the parent to schedule a resolution meeting. The purpose of the resolution meeting is to provide the parent and the district an opportunity to discuss the parent’s complaint and to reach a prompt and early resolution of the dispute without going to a hearing.

Questions?

Contact the Information Line at 888-320-8384 or mde-ose@michigan.gov.