



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



JENNIFER M. GRANHOLM
GOVERNOR

THOMAS D. WATKINS, JR.
SUPERINTENDENT OF
PUBLIC INSTRUCTION

MEMORANDUM

TO: State Board of Education
FROM: Thomas D. Watkins, Jr., Chairman
DATE: February 12, 2003
SUBJECT: Report on Approval of Special Education Procedures

New Administrative Rules for Special Education (Rules) were effective on June 6, 2002. Changes to the Rules made it necessary to update Complaint Procedures for Special Education and the Procedures for Dispute Resolution.

The Individuals With Disabilities Education Act (IDEA), §§ 300.660-300.662, requires that procedures be established for resolving complaints. The IDEA also requires that procedures be established to allow parties to use a mediation process to resolve disputes (§ 300.506). Part 8 of the Rules deals specifically with complaints (R 340.1851-R 340.1853) and the Rules reference procedures regarding the Dispute Resolution Process (Mediation).

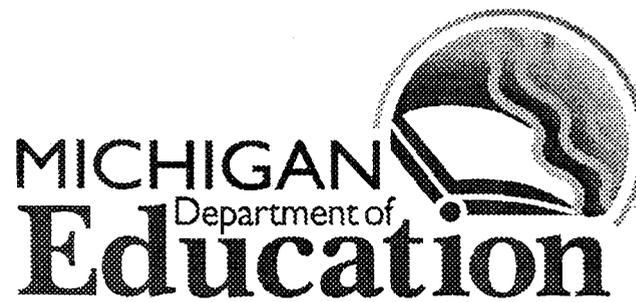
Under the regulations implementing the IDEA, the Department was required to seek public comment on any changes to the state's special education policies and procedures. The Office of Special Education and Early Intervention Services (OSE/EIS) conducted public hearings and received public comment from August 1, 2002 through October 31, 2002. The OSE/EIS staff made revisions to the Procedures based on public comment and presented it to the Special Education Advisory Committee (SEAC) in January 2003. In February 2003, the SEAC recommended the Complaint Procedures for Special Education and the Procedures for Dispute Resolution for approval by the Superintendent of Public Instruction. These procedures have been approved and are on file in the Board office.

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Complaint Procedures for Special Education



*Office of Special Education and
Early Intervention Services*

February, 2003

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MICHIGAN DEPARTMENT OF EDUCATION DECISION MAKING RULER - 2001



COMPLAINT PROCEDURES

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COMPLAINT PROCEDURES

I. RECEIPT OF THE COMPLAINT

A. Formal Complaint

A formal complaint must meet the criteria set forth in Rule 340.1701a(c). Briefly, a complaint:

1. Must be written and signed;
2. Can be filed by an individual or an organization, including an individual or organization from another state;
3. Must include the facts on which the allegation is based;
4. May pertain to one student, or multiple students, or to systems issues; and
5. Cannot pertain to an allegation that occurred more than one year prior to the date the complaint is received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.

B. Verbal Complaint

Upon receipt of a verbal complaint, the public educational agency shall inform the complainant that she/he has a right to file a written complaint that meets the standards contained in the Revised Administrative Rules for Special Education (Rules) and the final regulations implementing the Individuals with Disabilities Education Act (IDEA). The complainant may delay filing a formal complaint to allow for an informal resolution or mediation. A public educational agency is a local school district, a public school academy (PSA), an intermediate school district (ISD), or the Michigan Department of Education (MDE). Public educational agency also includes the Department of Corrections (DOC), the Family Independence Agency (FIA), and the Department of Community Health (DCH).

C. Initial Investigation Procedures

Any formal complaint filed with a public educational agency shall be immediately forwarded to the ISD or the MDE for investigation. The initial investigating agency shall:

1. Assign a staff person to conduct an independent investigation of the allegation. The investigator cannot have administrative responsibility for the programs and/or services against which the complaint is filed;
2. Send a copy of the section of the Rules which pertains to complaints (Part 8) and a copy of these procedures to the complainant;
3. Inform the complainant that she/he has a right to request the MDE to investigate the complaint. If the complainant requests the MDE to investigate the complaint, the ISD shall immediately forward it to the MDE and inform the MDE of the request. The MDE will review the complaint and will inform the parties that the MDE will either investigate the complaint under these procedures or will refer the complaint to the ISD for initial investigation;
4. Inform the complainant that she/he can file an appeal of the complaint investigation conclusions with the MDE if she/he disagrees with such conclusions;
5. Inform the complainant about options to mediate the complaint.

6. Assist the complainant to identify the concerns and formulate a complaint, which meets the standards contained in the definition of a complaint;
7. Give the complainant an opportunity to raise additional allegations, submit additional information, either orally or in writing, and clarify the allegations; and
8. If a complaint involves a student whose primary responsibility for care rests with the DOC, the FIA, or the DCH, the MDE will forward the complaint to the proper state agency for investigation.

D. Complaints and Due Process Hearings

1. If a complaint has been filed but is not resolved, and the complainant simultaneously requests a due process hearing, the investigating agency shall immediately inform the MDE of the request for the due process hearing. The MDE will review the complaint to determine if it contains any issues that are also part of the due process hearing. If the MDE determines that one or more issues in the complaint are addressed in the due process hearing, the MDE will set aside any issue that is related and will inform the parties that the matter is being held in abeyance, pending completion of the due process hearing. However, any issue in the complaint that is not part of the due process action must be resolved using the time limit and criteria identified in these procedures;
2. If a complaint is filed that pertains to an issue that was previously decided in a due process hearing, the investigating agency shall immediately inform the MDE. The MDE will inform the parties, including the complainant, that the hearing decision is binding; and
3. If a complaint is filed that relates to a public agency's failure to implement a due process decision, the investigating agency shall immediately inform the MDE. The MDE is responsible for resolving the complaint.

E. Time Line

1. The time line for investigating a formal complaint begins on the date that the complaint is filed, that is, the date that the ISD and/or the MDE receives the complaint, whichever date is earlier;
2. If the ISD receives the formal complaint first, the ISD shall forward a copy of the complaint to the MDE within three calendar days of receiving the complaint, including forwarding a copy of the complaint and all attachments to the MDE by U.S. Mail and faxing a copy of the letter of complaint itself to the MDE;
3. If the MDE receives the formal complaint first, the MDE shall forward a copy of the complaint to the ISD within three calendar days of receiving the complaint, including forwarding a copy of the complaint and all attachments to the ISD by U.S. Mail and faxing a copy of the letter of complaint itself to the ISD;
4. Within 21 calendar days of the filing of a formal complaint, the ISD must submit its investigation report to the complainant, any public educational agency involved, and the MDE. An extension in the time line may be requested, in writing, and granted by the MDE if exceptional circumstances exist with respect to the particular complaint; and
5. Within 60 calendar days of the filing of a formal complaint, the MDE must issue a final written decision to the complainant and any public agencies involved, unless exceptional circumstances exist with respect to the particular complaint.

II. INTERMEDIATE SCHOOL DISTRICT INVESTIGATION PROCESS

A. Each written, signed complaint must be investigated. The investigator shall submit a formal investigation report that identifies:

1. Date the complaint was received (a copy of the original complaint is to be attached to the investigation report);
2. Name of the investigator;
3. Name of any student(s) involved;
4. Operating school district and the resident school district or the PSA;
5. Student's category of eligibility and programs and services;
6. Date of and method used to establish direct contact with the complainant to discuss the complaint and to request any additional information;
7. Names of other persons contacted, the method, and the date;
8. Documents reviewed and/or relied on;
9. Any particular methods or procedures employed to gather information;
10. Allegation(s);
11. Legal standard(s) that governs the allegation(s);
12. Findings of fact that relate to the specific standard identified;
13. Conclusion(s) of whether a violation has or has not occurred, with an explanation of how that conclusion(s) was made and how conflicts, if any, were resolved:
 - a. If the facts substantiate that a specific violation occurred, the allegation is valid; the investigator must develop recommendations for corrective action and recommendations for remediation if a denial of services occurred; and
 - b. If the facts fail to support that a specific violation occurred, the allegation is not valid; and
14. Statement of appeal rights.

B. Authority to Examine Records

The investigator has the legal authority to examine appropriate records without the permission of the parent (Family Educational Rights and Privacy Act of 1974, as amended, and its federal regulations).

C. Non-Special Education Allegation

1. If information received from the complainant indicates that the allegation does not pertain to the Rules or regulations, the investigation report shall direct the person to the appropriate public agency; and
2. If the complainant indicates a possible violation of other civil rights based upon gender, race, religion, color, creed, ethnicity, disability, or age, the investigation report shall refer the complainant to the United States Department of Education, Office for Civil Rights, Bank One Center, Room 750, 600 Superior Avenue, East, Cleveland, OH 44114-2611.

III. MICHIGAN DEPARTMENT OF EDUCATION REVIEW PROCESS WHEN VIOLATIONS ARE FOUND

A. Special Consideration for Denial of Services

In resolving a complaint in which the public educational agency failed to provide required services, the MDE must address:

1. How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student;
 2. Appropriate future provision of services for all students with disabilities; and
 3. If a parent provided special education programs and/or services, which MDE determined to be the responsibility of the public educational agency, the MDE may, as appropriate, direct that public educational agency to reimburse the parents for the costs incurred by the parent.
- B. After the MDE has reviewed the ISD investigation report and the ISD recommendations for correcting the violation, the MDE will issue a final decision with the reasons for that decision. The final decision shall include procedures and time lines for effective implementation of the final decision, if needed. Effective implementation shall include identification of the documents the district must submit to verify compliance and may include technical assistance, negotiations, and corrective action plans.
- C. The ISD is responsible for assisting the district in violation and for monitoring progress of the corrective action.
- D. To verify that the public educational agency completed the corrective actions that the MDE directed, the public educational agency shall submit the required proof of compliance under the signatures of the public educational agency's administrator primarily in charge of special education programs and services, the public educational agency's chief administrative officer, and the public educational agency's president of the board of education, if the public educational agency is a school district. The public educational agency shall submit the proof of compliance within the time line specified by the MDE and shall forward a copy of the proof of compliance to the ISD.
- E. When final proof is received and found to be acceptable, the issue is considered resolved. The MDE will send a statement of resolution to all parties that summarizes the corrective action taken by the public educational agency found in violation.

IV. THE MICHIGAN DEPARTMENT OF EDUCATION PROCESS FOR CONDUCTING A STATE INVESTIGATION

- A. If the ISD determines that an allegation is invalid, the complainant may contest the decision and request a state investigation. The MDE shall:
1. Investigate an allegation brought forth on appeal;
 2. Give the complainant the opportunity to submit additional information, orally or in writing;
 3. If necessary, visit the public educational agency to conduct an independent onsite investigation;
 4. Review all relevant factual information and make an independent decision as to whether the public agency violated any applicable standard; and
 5. Issue a final written decision to the complainant and the public agencies involved that addresses the allegation and contains findings of fact, conclusions and the reason for the final decision.
- B. Upon receipt of a new allegation in a letter of appeal for a state level investigation of invalid conclusions, the MDE will take these actions:

1. If the new allegation is related to the allegation identified in the original letter of complaint and not addressed in the ISD investigation report, the MDE may investigate the new allegation in the state investigation or remand the new allegation to the ISD for investigation; and
 2. If the new allegation is not related to the allegation identified in the original letter of complaint, the MDE will open a new complaint investigation on the new allegation.
- C. If the ISD has not acted on a complaint or has not addressed all allegations in the complaint letter, the MDE shall either redirect the ISD to complete the investigation or conduct its own investigation and report its findings to all parties. The MDE may also remand any investigation to the ISD that does not meet the requirements listed in Section II, ISD Investigation Process.
- D. The MDE, on its own initiative, will also investigate a complaint rather than refer it to the ISD if it is in the best interest of the student to do so.
- E. The MDE shall notify the complainant and the public educational agency of the right to appeal the MDE's final written decision to a court of competent jurisdiction.

V. COOPERATION WITH THE MICHIGAN DEPARTMENT OF EDUCATION

All governmental agencies that are allegedly in violation shall cooperate with the MDE or the ISD in the conduct of an investigation under these procedures.

CHART 1: ISD INVESTIGATION PROCESS

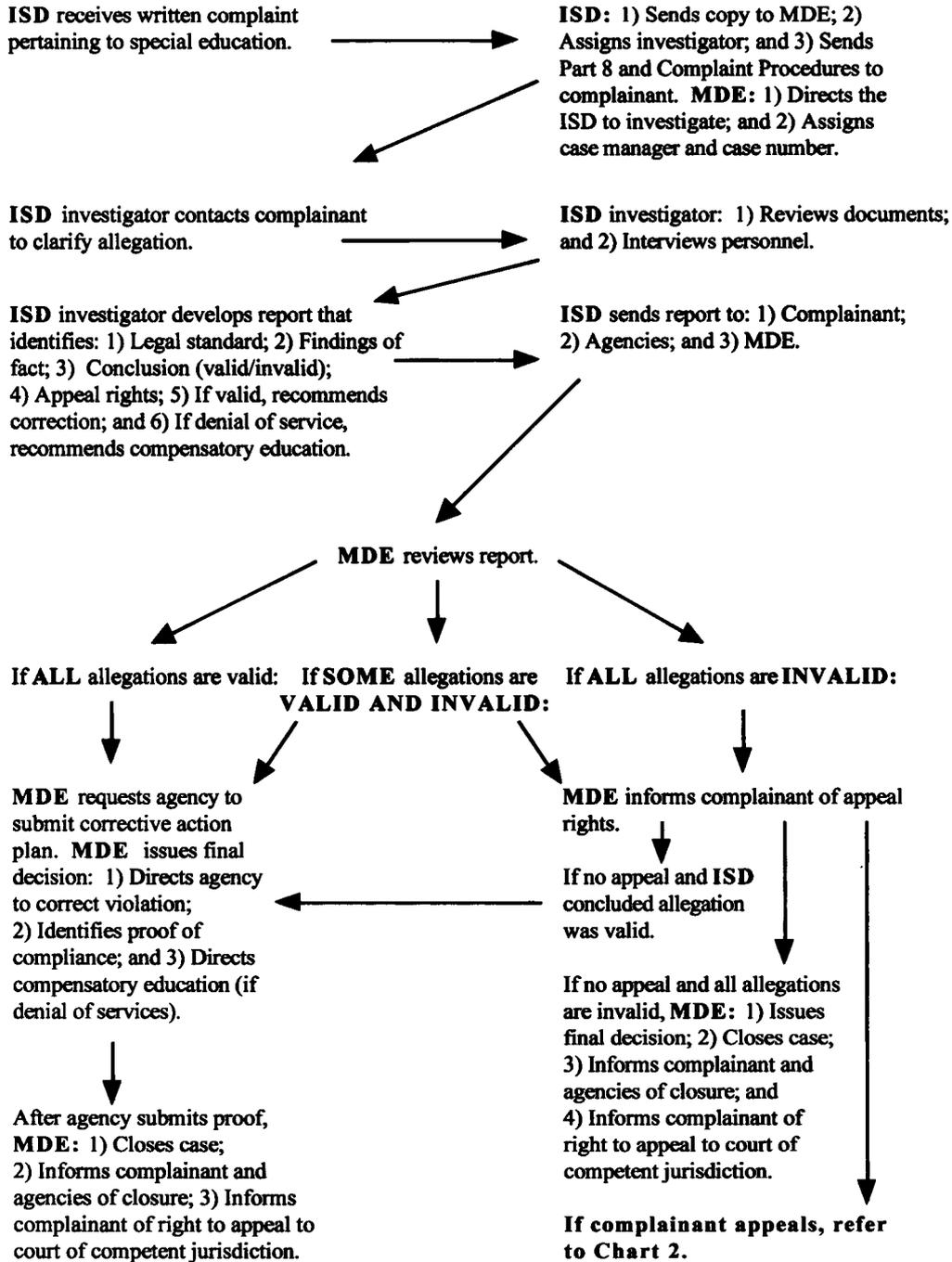
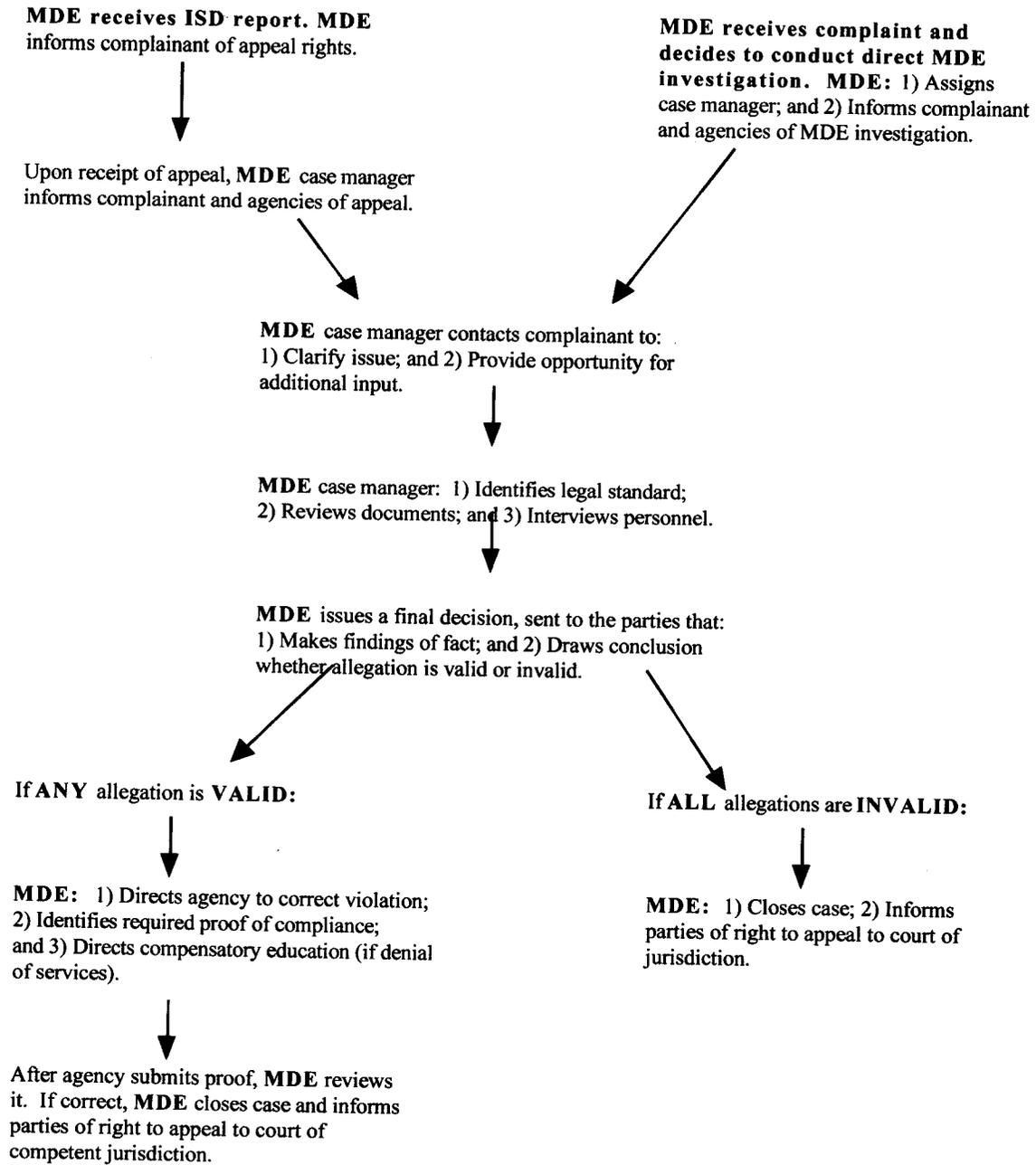
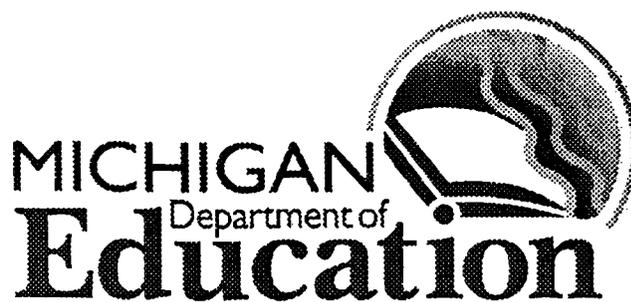


CHART 2: MDE INVESTIGATION PROCESS



Procedures for Dispute Resolution



*Office of Special Education and
Early Intervention Services*

February, 2003

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Procedures for Dispute Resolution

Mediation is a voluntary process available by request of either parents or school officials to resolve a dispute that arises with respect to special education matters. Mediation is available without the need to request a due process hearing or file a formal complaint. Mediation is also available when a due process hearing or a formal complaint has also been requested.

Whenever a due process hearing is requested by any party, the agency receiving the hearing request or complaint shall encourage the parties to the dispute to attempt mediation and shall provide the parties with contact information to reach the state's mediation service provider.

The Michigan Department of Education, Office of Special Education and Early Intervention Services (MDE - OSE/EIS), makes mediation services available free of charge to parents and school officials by annually awarding a grant to a mediation services provider to fund the cost of mediation. The grant is awarded based on a periodic competitive request for proposals.

Upon receipt of a request for mediation services, the agency project contact for information is the state's initiated project for mediation services.

When contacted, the mediation in-take worker or secretary shall obtain parental consent to secure confidential information regarding the student. The in-take worker shall do the following:

- 1) Describe the mediation process, including information regarding whether a complaint or a hearing has been requested or both;
- 2) Ask for information regarding issues of disputes;
- 3) Obtain contact information for the other party;
- 4) Request a copy of the student's most recent Individualized Education Program Team report;
- 5) Determine if the party would like a list of organizations that provide additional information or advocacy services;
- 6) Discuss who may be attending the mediation session (parent, parent-support person, school district administrative representative, school personnel who is familiar with the student, and anyone else who may have unique information regarding the student, such as a specialist);
- 7) Determine if anyone attending the mediation session has special needs (interpreter, wheel chair access, etc.); and
- 8) Contact the second party regarding the dispute(s) in question and obtain information above, as appropriate.
- 9) Upon completion of the in-take interview, provide written follow-up confirming the interview and the contents of what was discussed.
- 10) Determine a reasonable date, time and location of the mediation (may require several phone calls between the parties for this to occur);

- 11) Confirm the names and titles of those persons who may attend the mediation sessions;
- 12) Make arrangements for special accommodations, if needed;
- 13) Assign mediators from the Roster of Special Education Mediators;*
- 14) Notify both parties confirming the date, time and location of the mediation, names of mediators assigned and the names and titles of everyone who may participate in the mediation*; and
- 15) Brief the mediator on all information obtained thus far and provide copies of documents obtained, such as written complaints, notice of hearing request, proposed solution(s) and the student's latest individualized education program.

* Note: If the parties do not agree on the mediator assigned, the parties will review the Roster of Special Education Mediators to reach agreement.

At the beginning of the mediation session, the mediator will be sure that signed confidentiality statements are in place.

If during the mediation session(s) the parties reach agreement, the mediator will assist the parties in writing the agreement. If agreement is not reached, the parties may elect to proceed with the hearing process or complaint/investigation process, as deemed appropriate.

It is the school district's responsibility to notify all pertinent parties (MDE-OSE/EIS, hearing officer, intermediate school district) whether the agreement completely resolves all issues so that a hearing or complaint process may be terminated.