
Concept Paper on Supporting High Quality Outcomes for Students with IEPs: *Focusing on the Problem-Solving/Dispute Resolution System*

Purpose of this Concept Paper:

- To inform ongoing discussions in the Michigan Department of Education (MDE), the Special Education Reform Task Force and the Michigan Legislature regarding how an effective special education problem-solving/dispute resolution system promotes high quality outcomes for students with IEPs
- To propose process elements for an effective problem-solving/dispute resolution system that will be used consistently across the state to promote high quality outcomes for students with IEPs

Guiding Principles:

- Publically funded local school districts, Intermediate school districts (ISDs), and Michigan Department of Education/Office of Special Education (MDE/OSE) have different roles in the problem-solving/dispute resolution process; all share responsibility for ensuring high quality outcomes for students with individualized education programs (IEPs) through the delivery of a free, appropriate, public education (FAPE.)
- Employing, developing and supporting well-trained, caring and highly competent staff and administration in both general and special education is a primary strategy for assuring high-quality outcomes for students with IEPs and preventing problems regarding the delivery of FAPE.
- Parents need to be well-informed and have ready access to information and resources in order to understand the IEP process and IDEA procedural safeguards, advocate effectively on behalf of their children, make informed decisions, and be true partners in the special education process.
- Relationships built on shared understanding and trust between school personnel and families ultimately promote better educational opportunities and outcomes for students.
- The most timely and effective resolution of concerns occurs at the level closest to the child and results in better outcomes for students. Effective problem solving systems focus on improving the situation for the student while retaining positive, collaborative relationships between the school and family.
- The federal Individuals with Disabilities Education Act (IDEA) requires a system for dispute resolution that includes mediation, state complaints and due process complaints; however, informal dispute resolution strategies, while not a requirement of IDEA, must be a primary focus at all levels. A focus on preventing problems and resolving those that do arise in a timely and effective manner prevents escalation to more contentious remedies and ultimately benefits the student, the family, and the school district.
- Due process hearings are extremely costly to both families and school districts in terms of time, emotion, relationships, and dollars, and therefore should be a remedy of last resort.
- While state-level monitoring is not a component of the dispute resolution system identified in IDEA, the dispute resolution system and state-level monitoring system should be closely aligned.

Concepts for Consideration

MAASE offers the following concepts as a stimulus for dialogue. Each concept may require additional planning, procedural guidance, training, and technical assistance in order to be fully developed and implemented.

1. Informal Dispute Resolution

- A. Review the pre-service training/university coursework requirements for general education teachers and administrators to assure that they have substantive instruction in their responsibilities as general educators for students with IEPs pursuant to IDEA and MARSE.
- B. Review the pre-service training/university coursework required for special education teachers and administrators and consider adding requirements regarding consensus building and dispute resolution. Alternately, consider requiring participation in a continuing education course regarding dispute resolution within the first 3 years of employment.
- C. Expand the use of IEP Team meeting facilitators by providing additional professional learning opportunities in the area of IEP facilitation. MDE/OSE also might maintain and publicize a resource list of trained IEP facilitators which could be accessed by parents and/or school districts.
- D. Provide a clearly identified and easily accessible parent resource person at each ISD to field calls from parents and direct the concerns to appropriate problem solvers before the issues rise the level of a state complaint or due process complaint.
- E. Consistent with the authority granted to the state in §§300.149 and 151, consider establishing state procedures for a new “investigation of concerns” process (distinct from the state complaint process) which would provide an alternative for early resolution of concerns at the local level without filing a state complaint. The resident ISD would bear responsibility for receiving and investigating these concerns, as well as developing an improvement plan with the district, providing technical assistance, and monitoring fidelity of implementation and change in practice over time. State procedures around this process would protect a district from double jeopardy in the event of a state complaint being filed when the district is already working on an improvement plan resulting from the ISD-level “investigation of concerns.”

2. Mediation

- A. Consider a single-entry point for all mediation requests, such as an 800 number at MDE/OSE for parties to call to initiate a request for mediation. The single entry point will facilitate all of the following:
 - 1) Earlier resolution of concerns;
 - 2) Timely response from all parties regarding their willingness to participate in mediation;
 - 3) Accurate data collection regarding the number of mediation inquiries, actual mediation sessions, and results of mediation; and
 - 4) Closing of the communication circle by gaining feedback from participants after the mediation session has concluded.
- B. Establish a timeline for parties to respond to a written request for mediation. MAASE suggests 5-10 school days as a reasonable time period in which a response should be provided to the requesting party.
- C. Enhance the availability, quality, and use of mediation by:
 - 1) Assuring that model forms and procedures for requesting mediation are easily accessible to parents on the MDE/OSE website without being embedded in other documents or visible only after multiple “clicks” into website content.

- 2) Providing consistent and transparent information across the state regarding the availability, purpose, and benefits of mediation. This might be accomplished through a clearly-branded print media campaign, branded links that could be added to district websites or agency/advocacy group websites, and/or promotional information on local access cable television stations.
 - 3) Contracting with a small cadre of highly skilled individuals to serve as state-approved mediators. These individuals must be well-versed in state and federal special education laws, rules, policies, procedures and U.S. Office of Special Education Programs (OSEP) non-regulatory guidance documents, as well as the Michigan Administrative Rules for Special Education (MARSE) and state-level guidance documents. It is equally critical that the state-approved mediators have the demonstrated ability to build consensus, foster positive communication, and promote respectful relationships among the mediating parties.
 - 4) Developing and publishing an annual list of the state-level mediators and their credentials, allowing parents/districts to jointly select mediators from the OSE-issued list of approved mediators.
- D. The use of attorneys during mediation is contrary to the conciliatory/collaborative nature of mediation and must be discouraged.

3. State Complaints

- A. Consistent with §300.149, MDE/OSE is responsible for ensuring that the requirements of IDEA are carried out, and that each educational program for children with disabilities administered within the state meets the educational standards of the state, including the requirements of IDEA. Therefore, the responsibility for receiving, investigating, and rendering decisions relative to state complaints must rest with MDE/OSE.
- B. After receipt of a formal, written state complaint and during the initial conversation with the complainant, an MDE/OSE representative must ensure that the complainant is fully informed about mediation as a dispute resolution option. This information must go beyond a mere inquiry regarding the complainant's interest in exploring mediation, and must include a comparison of the state complaint process and the mediation process, as well as an explanation of the advantages and disadvantages of mediation versus a state complaint.
- C. Intermediate school districts bring important expertise to bear on the state complaint process, specifically in the areas of facilitating early resolution to disputes and informing MDE/OSE decisions regarding the most appropriate and effective corrective actions (and related technical assistance) for findings of noncompliance resulting from a state complaint investigation. While the state retains the responsibility to investigate and render decisions relative to state complaints, procedures must be developed to clarify the ISD role in brokering early resolution and consulting on corrective actions. This will result in more effective, long-term systemic change at the district level.
- D. For all state complaints, require that the ISD convene a resolution session with the complainant and the district within 15 days of receipt of a state complaint. The purpose of the resolution session would be to facilitate resolution of the complaint at the level closest to the student, prior to the state issuing a

finding relative to the complaint. Upon written agreement between the district and the complainant that the issue has been satisfactorily resolved, the state complaint would be dismissed by MDE/OSE. *(NOTE: The resolution session must not be used to delay the state complaint investigation process; therefore, the 15-day resolution period must run concurrently with the MARSE 60-day timeline for complaint investigation.)*

- E. The report of the Special Education Reform Task Force suggests that there should be an appeal process for state complaints. When the responsibility for investigating and rendering decisions relative to a state complaint rests primarily with MDE/OSE (as suggested in item 3B above) an appeal process becomes a moot point because there are no higher, non-judicial authorities to which an appeal might appropriately be made.
- F. Model forms for filing a state complaint (as distinct from a due process complaint) must be easily accessible to parents on the MDE/OSE website without being embedded in other documents or visible only after multiple “clicks” into website content.

4. Due Process Complaints

- A. Consistent with §300.149, MDE/OSE is responsible for ensuring that the requirements of IDEA are carried out, and that each educational program for children with disabilities which is administered within the state meets the educational standards of the state, including the requirements of IDEA. Therefore, the MDE/OSE should retain responsibility for arranging for due process hearings in accordance with IDEA and MARSE.
- B. Model forms for filing a due process complaint (as distinct from a state complaint) must be easily accessible to parents on the MDE/OSE website without being embedded in other documents or visible only after multiple “clicks” into website content.
- C. Upon receipt of a formal, written state complaint and during the initial conversation with the complainant, an MDE/OSE representative must ensure that the complainant is fully informed about both mediation and a state complaint as dispute resolution options. This information must go beyond a mere inquiry regarding the complainant’s interest in exploring mediation or a state complaint, and must include a comparison of a due process hearing to the state complaint process and the mediation process, as well as an explanation of the advantages and disadvantages of due process versus mediation versus a state complaint.

5. Aligning the Dispute Resolution System with the State Monitoring System

- A. Collect, analyze and share data regarding the use/results of dispute resolution in order to inform the selection of districts for state-level monitoring as well as influence the nature of the monitoring that is conducted.
- B. Align standards of practice and required corrective actions for both state complaints and incidents of student-level noncompliance found in monitoring.
- C. Align corrective actions in the two state systems to avoid duplication of effort.