



# Corrective Action Process for Noncompliance With the IDEA and MARSE

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This document outlines the Michigan Department of Education (MDE) Office of Special Education (OSE) requirements for resolving noncompliance occurring at an intermediate school district or local educational agency. The *Individuals with Disabilities Education Act* (IDEA) requires the MDE, OSE to ensure that students with disabilities are educated in accordance with the regulations of the IDEA and the *Michigan Administrative Rules for Special Education* (MARSE).

The state educational agency (SEA), as part of its general supervisory responsibilities pursuant to 34 CFR §§ 300.149 and 300.600, must adopt written procedures for remedies of an ISD's or LEA's denial of appropriate services. *34 CFR § 300.151(a)*.

## State Education Agency Responsibilities Related to Noncompliance and Corrective Action

The OSE may find an ISD or LEA noncompliant with an IDEA or MARSE requirement, either through the state complaint process, due process hearings, or routine monitoring activities. When this occurs, the OSE requires the ISD or LEA to correct the issue and provide proof of compliance.

"In exercising its monitoring responsibilities, the state must ensure that when it identifies noncompliance with the requirements of Part B of the IDEA by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the state's identification of the noncompliance." *34 CFR § 300.600(e)*.

In resolving a complaint in which the SEA has found a failure to provide appropriate services, the SEA, pursuant to its general supervisory authority, must address the failure to provide services, including corrective action appropriate to address the needs of the child; and appropriate future provision of services for all children with disabilities. *34 CFR § 300.151(b)*.

Once the OSE identifies noncompliance, it is responsible for tracking and monitoring the district's implementation of the corrective action activities ordered. Closely monitoring the correction of noncompliance is paramount to ensuring that children with disabilities are provided with a free appropriate public education (FAPE) and



with the opportunity to progress towards meeting individualized education program (IEP) goals and statewide achievement standards.

States must ensure that districts correct noncompliance even if the violation relates to a single student or is merely a procedural violation of the IDEA and not a substantive denial of a FAPE. The state must also require districts to correct any underlying systemic practice that gave rise to a violation. *Letter to Copenhagen* (OSEP 2008).

Also important is the verification of correction of noncompliance. General supervision systems must include a method of verifying whether or not the corrective action plan activities have been implemented, and whether the results of such corrective action have brought the LEA into compliance with Part B of the IDEA. This obligation is resolute for noncompliance found through monitoring or dispute resolution activities. (Pingora Consulting, Dispute Resolution Program Review, February 2016)

## **Types of Violations**

Violations are procedural or substantive. A procedural violation is a violation of the IDEA or the MARSE. Procedural violations may rise to a substantive violation. A substantive violation occurs when the area of noncompliance exhibits at least one of the following:

- a) Impeded the student's right to a FAPE.
- b) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the student.

The OSE reviews each issue of noncompliance to determine whether it is student level, systemic (district level), or both. Noncompliance from complaints and from routine monitoring activities are both included in the Continuous Improvement and Monitoring System (CIMS). This provides a complete picture of the district's noncompliance in order to provide needed technical assistance and ensure correction of noncompliance.

## **Types of Corrective Action**

The OSE may order districts to take corrective action that includes but is not limited to the items below:

Student-level corrective action (SLCAP) to address the needs of the child, such as:

- a) Conduct academic or behavioral evaluations to determine eligibility or educational needs.
- b) Convene an IEP team meeting.



- c) Complete a manifestation determination review (MDR).
- d) Provide compensatory services to an individual student, such as extra teaching time or activities specific to a student's social or behavior needs.

District-level corrective action (CAP) to ensure appropriate future provision of services for all children with disabilities, such as:

- a) Review, revise, and/or change district procedures to ensure compliance.
- b) Provide professional development to relevant staff.
- c) Utilize technical assistance from the state, intermediate school district, or other.

## **Monitoring of Corrective Action and Proof of Compliance**

The OSE issues corrective action plans (CAPs) for each ISD and LEA in which noncompliance has been identified. The need for a CAP is identified through the state complaint process or monitoring activities and communicated to districts through the CIMS. The district then creates a review and analysis process (RAP) team. The ISD assists in the selection of members for the RAP team. The RAP team, which includes the ISD, analyzes the problem that led to the noncompliance and develops and submits the plan to address the corrective action, including any additional activities deemed essential.

The RAP team determines the root cause or underlying problems that led to the noncompliance and, in turn, focuses on the district's policies, procedures, and practices, or the lack of supports that contributed to the noncompliance.

The RAP team considers the following:

- a) What changes could correct the problem?
- b) How can those changes be implemented (e.g., revision of policies or procedures, professional development to change practices, creation of new supports for staff or students)?
- c) What tools, resources, or assistance are needed to make the changes?

Districts must include as many details as possible in their CAPs about:

- a) The exact activities that will be performed.
- b) The person responsible for each activity.
- c) Event or completion dates.
- d) Documentation of evidence that tasks and activities were completed.

The OSE directs RAP teams to also consider the following:

- a) How will the ISD or LEA ensure that the noncompliance has promptly been corrected?



- b) Will relevant data or documentation be reviewed for compliance?

In many cases, policies, procedures, and/or practices that contributed to the noncompliance will need to be changed, and evidence of these changes must be included in all CAPs.

The OSE reviews each CAP and approves the activities or recommends that the district make revisions.

## **Proof of Compliance**

After the OSE approves the CAP, the ISD or LEA completes the identified corrective action activities and submits the evidence of compliance to the OSE.

**When a violation is substantive in nature, additional documentation is required as follows:**

### **Student-Level Corrective Action**

The district must submit evidence that the barriers preventing the student from receiving a FAPE have been removed. Records or activities that may be utilized to indicate correction and compliance with the IDEA and the MARSE include:

- a) Educational benefit review of a student's current IEP and IEPs from the past two years (formats are available from the OSE).
- b) Alignment of data and present level of academic achievement and functional performance information with the development and contents of the IEP supplementary aids and services and related services and programs.
- c) Completion of assigned corrective action tasks and desired outcomes.
- d) Review of relevant student documents which may include an IEP, behavior intervention plan, evaluation reports, schedules, service provider logs, and detailed and current progress reports and report cards.
- e) Implementation of the student-specific corrective action, e.g. compensatory education, a new IEP, etc., which may include parent confirmation.
- f) Staff interviews.
- g) School visits.

The OSE may choose to include other methods to verify correction of noncompliance, as needed.

The district must provide the OSE with status reports on the progress of the student-level corrective action, as directed by the OSE.



## **District-Level Corrective Action**

The district must submit evidence that the corrective action has resulted in a changed practice and that the district has achieved compliance with the IDEA and the MARSE. Activities that may be utilized to indicate correction include:

- a) Documentation of policies, processes, practices and procedures aligned to regulations.
- b) Documentation of professional development.
- c) Review of 8 to 20 relevant special education documents or records, based upon the size of the district, that are of a similar student demographic sample (e.g., initial or annual review IEPs, multidisciplinary evaluation team and evaluation reports, manifestation determination reviews, behavior intervention plans, positive behavior support system).
- d) District visits.
- e) Staff interviews.

The district must provide status reports on the progress of the district-level corrective action, as directed by the OSE.

## **Verification of Compliance**

Catamaran is the system used to track activities and data related to the *Individuals with Disabilities Education Act* (IDEA) and the *Michigan Administrative Rules for Special Education* (MARSE) for the Michigan Department of Education Office of Special Education (OSE). Catamaran is designed to support districts and service areas in meeting their obligations of the IDEA, MARSE, and state identified priorities. Catamaran is an external system managed by the OSE.

Below is the process for ensuring timeliness of both student and district level corrective action plans in the Catamaran system:

### **Student Level Corrective Action Plan**

- a. Catamaran tracks any corrective action as described below and provides timely notices to districts, ISDs, and the OSE as to upcoming deadlines. The process provides the OSE with the tools to ensure timely implementation of state complaint final decisions, due process final decisions, and monitoring activities.
- b. At the end of a state complaint investigation, after violations have been determined, the OSE case manager completes a form in the Catamaran system that identifies the citation(s) that were violated, the item(s) of noncompliance, the required corrective action, and the specified due date(s) for those corrective actions. The district receives this information within five



calendar days after the final decision has been issued in the Catamaran system.

- c. After the five calendar days, the Catamaran system notifies the district that was found out of compliance and their ISD to inform them that a student level corrective action plan (SLCAP) has been issued, its due date, and provides directions for locating the SLCAP in Catamaran. Once the SLCAP is issued, the district typically has 30 school days to complete and submit the SLCAP to the OSE. Sometimes due to individual situations, the SLCAP due date to correct the violation can vary to be due either before or after 30 school days.
- d. If the district has not submitted the corrections in Catamaran within two weeks, the system will send a notification to the district that the SLCAP is due in 2 weeks.
- e. Once the district has made the necessary corrections outlined in the SLCAP and uploaded supporting documentation to show correction of noncompliance, the district submits the SLCAP in Catamaran to the ISD for verification. The district receives a confirmation email indicating that the SLCAP was submitted to the ISD and the ISD receives a notice that the SLCAP is now available for their review and verification. The ISD will then be able to access the SLCAP, review the uploaded supporting documentation that demonstrates compliance, and may reach out to the district to clarify any other items as needed.
- f. Once the ISD confirms that the district has fully corrected the SLCAP, the ISD notes the date of the review and submits the SLCAP to the OSE for review. Upon submission, the district, ISD, and assigned OSE personnel are notified by the Catamaran system that the SLCAP is ready to be reviewed by the OSE. The OSE will access the submitted SLCAP to determine if the noncompliance has been corrected. The OSE reviews the submitted documentation, any comments from the district and the ISD, and may also contact the district for any necessary clarification. Once the OSE determines that the district has corrected the noncompliance, the OSE notes the review date, inserts any additional comments, and then closes the SLCAP. Once closed, the district, ISD, and the OSE receive notification from the Catamaran system confirming that the SLCAP was verified and closed. If the SLCAP cannot be verified as corrected, the OSE writes the necessary corrections on the form, and returns the SLCAP to the district for further corrective action.
- g. Catamaran provides the OSE with a Complaint SLCAP query. The query will assist the OSE in tracking the SLCAPs that have been issued and generates a report containing detailed data including the district information, the associated complaint case number, district's due date(s), student information, and the items that were found noncompliant and any



accompanying required corrective action. This report indicates the date when the district, ISD, and OSE reviewed the SLCAP, wrote comments, and the current status of the SLCAP. This report will assist the OSE to ensure that SLCAPs are corrected in a timely manner.

## **Corrective Action Plans**

- a. The OSE also issues CAPs to districts at the end of a state complaint investigation or as a result of a monitoring activity. CAPS are issued to districts who have been found in violation of one or more provisions of the IDEA or the MARSE. CAPs must be completed, verified, and closed within one year from the date that they are issued. The CAP process is aligned with but separate from the SLCAP process.
- b. For CAPs issued as the result of a complaint, at the end of each investigation, the OSE case manager completes a form in Catamaran that outlines the required corrective action for the district. The district, ISD, and assigned OSE personnel receive a notification that the investigation is complete. Depending on when the complaint investigation is complete, in 1-30 days the CAP is issued to the district in Catamaran and the district receives a notification that the activity is available. However, the district should begin working on the CAP once the final decision has been issued.
- c. Catamaran provides due dates in text and on a graphical progress bar within the system so that the district, ISD, and the OSE can determine when work must be completed and if they are completing the activities on time. Reminders are sent approximately two weeks before a due date and overdue notices are sent to districts with a copy to the ISD one day after the due date.
- d. Once the district has made the necessary corrections outlined in the CAP, and uploaded supporting documentation to show correction of noncompliance, the district submits the CAP in the Catamaran system to the ISD for verification.
- e. The district receives a confirmation email indicating the CAP was submitted to the ISD. The ISD receives a notice that the CAP is now available for review and verification. The ISD may access the CAP, and review uploaded supporting documentation. The ISD may contact the district to clarify any other items as needed. Once the ISD confirms the district has fully corrected the CAP, the ISD notes the date of the review and submits the CAP to the OSE.
- f. Upon submission, the district, ISD, and assigned OSE personnel are notified by the Catamaran system that the CAP is ready to be reviewed. OSE personnel may access the submitted CAP to determine if the noncompliance/violation has been corrected. The OSE reviews submitted documentation and any comments from the district and/or the ISD. The OSE



may also contact the district for any necessary clarification. Once the OSE determines that the district has corrected the noncompliance, the OSE, inserts any additional comments, and then closes the CAP.

- g. During the SLCAP or CAP process, after reviewing submitted information and documentation, the ISD and/or the OSE may return the CAP or SLCAP if the information or documentation do not meet the IDEA or MARSE standards.
- h. Closing the CAP and SLCAP then closes the state complaint within the Catamaran system and a letter is generated to all parties advising them that the state complaint is closed.
- i. A Complaint CAP query is available in Catamaran to the OSE. This query will assist the OSE in tracking the CAPs that have been issued and contains detailed data including the district information, the associated complaint case number, district due date(s), and whether the CAP is still with the district, the ISD, or OSE. This report will assist the OSE to ensure that CAPs are corrected in a timely manner.