



Minnesota Department of Education

Resolution Process for the

Misuse of Special Education Funds

Minnesota Department of Education
Division of Program Finance
1500 Highway 36 West
Roseville, Minnesota 55113-4266
Phone: 651-582-1612
Fax: 651-582-8878
E-mail: mde.funding@state.mn.us
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Authority:

The Commissioner of the Minnesota Department of Education (MDE) has the responsibility to determine whether a program does or does not comply with the rules of the department. The Commissioner has the responsibility and authority to determine whether any facts concerning the program or its budget differ from the facts in the district's approved application, and to withdraw the program or aid approval and withhold aid at any time, in accordance with Minnesota Statute § 125A.75.

The Division of Program Finance investigates issues concerning the misuse of special education funds, which is a violation of the application and Statement of Assurances required by Minnesota Statute § 125A.75 and federal regulation 34 C.F.R. § 300.240. The Division of Compliance and Assistance separately investigates issues of violations of a Free Appropriate Public Education (FAPE).

Definitions:

An allegation of misuse of funds: An allegation of misuse of funds is a written and signed statement alleging that a public agency has misused public special education funds. The alleged misuse of funds could be a violation of state or federal law. The allegation of misuse of funds must include a statement of facts upon which the allegation is based.

Public Agency: A public agency may be a public school district, a charter school, or other public or private entity providing publicly funded educational services to students with disabilities. Any private entity, such as a treatment program, is subject to MDE's jurisdiction when it receives public funds for educating students with disabilities who are eligible for protections under the Individuals with Disabilities Education Act (IDEA).

When may an allegation of misuse of funds be filed?

An allegation may be filed whenever an organization or individual believes that a public agency has violated its Application for Special Education Funds and Statement of Assurances. Members of the public may contact Special Education fiscal personnel at 651-582-1612 if they are unsure whether their concerns meet these requirements.

The alleged violation must have occurred within one year of the date the allegation is received by MDE, unless a longer period is reasonable because the violation is continuing or the organization or individual filing the allegation is requesting compensatory services. In any case, the alleged violation must not be more than three years prior to the date the allegation was received by MDE.

Procedures for filing an allegation of misuse of funds:

1. Any organization or individual may file an allegation of misuse of funds.
2. Allegations must be in writing and signed. The identity of a person filing an allegation may be withheld from the public agency under appropriate circumstances such as the whistleblower statutes.
3. Allegations must include alleged facts that show the public agency has violated a requirement of state or federal law.
4. Written allegations of misuse of special education funds must be sent to:

*Audrey Bomstad, Supervisor
Division of Program Finance
MN Department of Education
1500 Highway 36 West
Roseville, MN 55113-4266
Fax: 651-582-8878*

5. Allegations of misuse of funds require a return address and phone number to allow for future contacts.
6. Once the written allegation is received by MDE, it is assigned to a Special Education Funding Specialist. The specialist reviews the allegations, determines the issues in question, and the federal or state laws that may have been violated.
7. A sixty (60)-calendar day timeline begins on the day the allegation is received or, when necessary, clarified with the person filing the allegation. Under exceptional circumstances, the 60-calendar day timeline may be extended.
8. Persons filing allegations may submit additional information relevant to the allegation, either orally or in writing, at any time during the course of the investigation.

After the allegation is received, MDE will take the following action:

1. If further clarification of the facts or issues is needed, the Special Education Funding Specialist will contact the organization or individual filing the allegation by telephone. In some cases, the person may be referred to another more appropriate compliance system.
2. A letter acknowledging receipt of the allegation will be sent to the person filing the allegation.

3. A letter stating the alleged misuse of funds, including the apparent applicable laws, will be sent to the school district superintendent with copies to the person filing the allegation and the district's director of special education. A courtesy telephone call will be made to the director.
4. The special education funding specialist determines how the investigation will proceed including, but not limited to, phone contacts, requests for submission of written documents, on-site reviews, interviews, consultation with educational specialists, or other measures which will resolve the issues of the allegation.
5. If MDE, as a result of the inquiry, finds compliance issues that differ from the funding issue(s) under investigation, MDE will refer the noncompliance issues to the appropriate compliance system.
6. All relevant and conclusive misuse of funds evidence will be addressed in the final decision.

Public agency responsibilities during the misuse of special education funds investigation process:

Public agencies must provide all information requested by MDE. The public agency may also respond in writing to the allegations and submit additional pertinent data within the timeline specified by the Special Education Funding Specialist. If the allegation is filed during a period when school buildings or staff are difficult to access, the allegation must still be resolved within the 60-calendar day timeline. Under exceptional circumstances, the specialist may issue an extension of timelines.

The investigative process often requires direct contact with relevant public agency staff. Public agencies must assist in the investigation and provide unrestricted access to any requested documentation, facilities, and staff. Public agency staff must be available for interviews, as needed, and unencumbered by reprisals, implied or otherwise, for providing relevant information. The time, place, manner, attendees, and scope of interviews are at the exclusive discretion of the MDE investigator.

Refusal of any staff to provide requested information to MDE may result in adverse findings and conclusions against the public agency as the weight of the evidence is left to favor the allegation.

Upon request, MDE will forward a copy of any response of the public agency to the person filing the allegation in accordance with data practice laws. The public agency may request a copy of the letter alleging misuse of funds, although MDE reserves the right to protect a person's identity in accordance with the state and federal laws that allow "whistle blower" protections. Public agencies are cautioned to respond to MDE's issue letter, not to the allegation letter, as the issues under investigation are often clarified after the letter is submitted to MDE.

Final decision:

A final decision containing facts, conclusions, and corrective action, including any adjustment of special education aid paid, as necessary, is sent to the district superintendent, the director of special education, and the organization or individual who filed the allegation. The final decision is binding.

Corrective action:

MDE is obligated to order corrective action in any special education program where misuse of public funds has occurred. Corrective action may be assigned to public school districts, charter schools, private residential programs, and private correctional programs. In some cases of noncompliance, the public agency may lose entitlement to state or federal special education funds generated on behalf of student(s), staff member(s), or contracted service(s).

In instances where misuse of special education funds are confirmed, MDE:

1. must modify or withdraw the program or aid approval and withhold aid,
2. must address future reporting and use of funds in the district, relevant to the findings,
3. may restore funds that are delayed, withheld, or withdrawn upon successful corrective action.

The responsible public agency must carry out all required corrective action within stated timelines. Acceptable corrective action completed before issuance of the final decision will be noted. Technical assistance may be provided by MDE to assist in the effective implementation of the corrective action.

Corrective action is monitored by MDE:

MDE monitors the implementation of corrective action orders through follow-up contacts, reports, or other means. The organization or individual filing the allegation is expected to notify MDE if an order appears to have not been implemented.

If the public agency fails to comply with corrective action, MDE is authorized to apply further fiscal sanctions or other measures to ensure the matter is resolved. These remedies may include a delay or loss of additional education funds, depending on the seriousness of the violation and persistence of noncompliance.

In cases where a public agency receives a fiscal sanction, including non-payment of funds, the public agency may request a hearing. A hearing request must be made in writing to the Commissioner of MDE within 10 business days of notice of the sanction. The written request must be accompanied by the public agency's objections and recommendations and the hearing is conducted by the Commissioner's review of the public agency's submissions. A decision will be issued in 30 business days.

Upon resolution of the allegation of misuse of funds, MDE will send its written decision to the person filing the allegations and the public agency. At that time, the findings and resolution become public information.

Withdrawal of an allegation of misuse of funds:

A person filing an allegation of misuse of funds may subsequently request that the allegation be withdrawn. When this happens, the Special Education Funding Specialist will consider the request and make a decision on a case-by-case basis. Withdrawal of an allegation of misuse of funds may be permitted only if the withdrawal would be consistent with MDE's responsibility to ensure compliance with state and federal law.

For additional information:

A summary of allegation of misuse of funds decisions is maintained by MDE and periodically reported to the state Special Education Advisory Council. Special education misuse of funds decisions are also posted on the MDE website.



MISUSE OF SPECIAL EDUCATION FUNDS ALLEGATION FORM*

Your Name: _____ Date: _____

Day Phone: _____ Fax: _____

Address: _____

School District Involved: _____

If allegation involves a student:

Students Name: _____

A copy of MDE's Resolution Process for the Misuse of Special Education Funds can be obtained by request (at 651-582-1612) or can be found on our website at:

http://education.state.mn.us/html/intro_fund_se_forms.htm

According to the Resolution Process for the Misuse of Special Education Funds, an allegation must:

- 1) be in writing,
- 2) be signed,
- 3) include a statement that a public agency (usually a school district) has violated a requirement of the Application for Special Education Funds, Statement of Assurances,
- 4) include the facts upon which the allegation is based, and
- 5) must allege a violation that occurred within the past year. If a violation occurred within the past three years, MDE may investigate if there is a continuing violation or compensatory services are requested.

Please attach additional pages if necessary.

A. Statement of the violation:

You do not have to know specifically what law was violated, but you must explain what you believe the school has done wrong, for example, "The school is using special education funds to pay for special education paraprofessionals that are on playground duty for two hours a day." OR "The district has used state special education funds to purchase supplies and equipment that are not being used with students with disabilities."

B. Facts upon which the allegation is based:

Describe what actually happened to lead you to believe the school has violated the law, for example, “When I visited my son’s classroom, the special education teacher was teaching a general education math class when she was supposed to be teaching a special education resource class.” OR “The special education classroom purchased a computer with federal special education funds and the computer is now being used for the library.”

C. Additional Comments:

Signature: _____

Date: _____

If you have any questions, please contact:

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***This form is optional. Allegations of misuse of special education funds may be submitted to MDE (at the address listed above) by using plain paper, stationary, and so on.**