



STATE ADMINISTRATION OF EARLY INTERVENTION DUE PROCESS COMPLAINTS & HEARINGS

ADOPTING PART B PROCEDURES

34 C.F.R. §§ 303.440 through 303.449



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Stakeholders providing feedback included:

Monica Paris Program Consultant for the Division of Children’s Medical Services, Bureau of Early Steps and Newborn Screening, Florida Department of Health

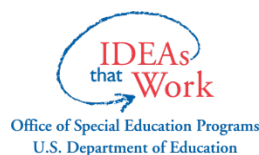
Sharon Walsh Technical Assistance Specialist, Early Childhood Technical Assistance Center (ECTA)

ABOUT THIS RESOURCE

This publication was developed by CADRE, a project of Direction Service pursuant to Cooperative Agreement CFDA H326X180001 with the Office of Special Education Programs, United States Department of Education, Carmen M. Sánchez, Project Officer. The opinions expressed and materials contained herein do not necessarily reflect the position or policy of the United States Department of Education and you should not assume endorsement by the Federal Government. This resource is in the public domain. The manual may be reproduced in its entirety or portions thereof for noncommercial use without prior permission. This document may be customized by State Lead Agencies to include state specific information. States are encouraged to distinguish between Federal and State regulations.

This manual draws from the OSEP’s [Dispute Resolution Self-Assessment](#) and, where applicable, [OSEP Part B Memo and Q&A on Dispute Resolution \(2013\)](#), United States Department of Education policy documents, comments to the regulations, and relevant case law. While, the OSEP Memo and Q&A on Dispute Resolution (2013) is specific to Part B of the IDEA, references to the Q&A may provide insight to Part C Lead Agencies that have adopted Part B procedures.

This resource is not intended to interpret, modify, replace requirements of Federal or State law, or serve as a definitive treatment of the regulations. Application of information presented may be affected by State statutes, regulations, departmental and local policies, and any new guidance not issued at the time of this publication.



INTRODUCTION

Each State participating in Part C is required to establish, implement, and maintain procedural safeguards related to due process hearings. States have the option to adopt either Part C or Part B of the IDEA due process procedures. CADRE has developed two different manuals to address the different rules. This manual was created to assist State Part C Lead Agencies (LAs) who have adopted Part B due process complaints and hearing procedures in meeting the Federal requirements under IDEA, and effectively and efficiently administer due process complaints and hearings. This manual includes hyperlinked citations, responses to some frequently asked questions, coaching questions to prompt reflection about the dispute resolution (DR) system design and how some procedures are, or might be, operationalized, and more. Key features needed for the State administration of due process complaints and hearings include:

- Written State procedures that align with IDEA
- Infrastructure to support the oversight, case management, data collection and reporting, and implementation of the procedural safeguards related to due process complaint and hearings
- Trained and impartial hearing officers that align practices and decisions with Federal and State law
- Clear communications related to due process to external and internal stakeholders, including hearing officers
- Mechanisms to effectively communicate with stakeholders about due process, as well as to explain how it operates in conjunction with the other IDEA dispute resolution options
- Means to access the due process option, including but not limited to an optional model form

CADRE has identified five management function areas for effective systems: [Systemwide Oversight, Infrastructure & Organization](#); [Program Access & Delivery](#); [Standards & Professional Development](#); [Public Awareness & Outreach Activities](#); and [Evaluation & Continuous Quality Improvement \(CQI\)](#). For more information, visit CADRE's [System Improvement](#) online resource.

To conduct a crosswalk of your State regulations, policies, and procedures with the Federal requirements under IDEA, use OSEP's [Dispute Resolution Self-Assessment](#).

States are strongly encouraged to periodically review their due process complaint and hearing procedures to ensure that they: 1) align with State and Federal law; 2) are clear; and 3) help facilitate an efficient and effective due process complaint system. States may consider developing an internal operations manual addressing the implementation of the State's policies and procedures.





TABLE OF CONTENTS

DUE PROCESS COMPLAINTS & HEARINGS	6
Due Process Complaint May Be Filed On	6
Situations Where the LA or EIS Provider Do Not Have the Right to File	7
Time Limitation for Filing a Due Process Complaint	7
FILING A DUE PROCESS COMPLAINT	7
Required Information.....	8
Model Forms	8
Support for Parents.....	9
Filing Electronically.....	9
Sufficiency of the Complaint	10
Amending the Complaint	10
Tracking Receipt of Complaint	10
CHILD’S STATUS DURING PROCEEDINGS	11
RESPONDING TO DUE PROCESS COMPLAINTS	11
Other Party Response to a Due Process Complaint	11
LA Response When the LA Did Not Send a Prior Written Notice.....	11
PRE-CONFERENCE HEARINGS	11
TIMELINE FOR RESOLUTION OF DUE PROCESS HEARINGS	12
RESOLUTION PERIOD	12
Adjustments to the Resolution Period	12
Written Settlement Agreements.....	13
RESOLUTION MEETINGS	13
Timeline for Convening a Resolution Meeting.....	13
Resolution Meeting.....	14
Waiving a Resolution Meeting	14
Failure to Hold a Resolution Meeting	14
Confidentiality and the Resolution Meeting	14
Agreement Review Period.....	14
Impact of Agreement on Due Process Complaint	14
If No Agreement Was Reached During the Resolution Meeting.....	15
MEDIATION	15
Mediation During the Resolution Period	15
Mediation Discussions are Confidential.....	16
IMPARTIAL DUE PROCESS HEARINGS	16
Subject Matter of the Hearing	16
Extensions of the Timelines	16
HEARING RIGHTS	17
Parental Rights at Hearings	18
Convenience.....	18
Accommodations	18



HEARING DECISIONS.....	18
Decision of the Hearing Officer	18
Finality of the Decision	19
Enforcing the Decision	19
Timeliness and Tracking of the Decision	19
Review Process for States with a Two-tiered System	20
CIVIL ACTION	21
Time Limitation	21
Additional Requirements	21
Findings and Decision to Advisory Panel and General Public.....	21
CONSIDERATIONS FOR OPERATIONALIZING THE QUALIFIED IMPARTIAL HEARING OFFICER REQUIREMENT	22
One-tiered or Two-tiered State System	22
Maintaining a Roster of Hearing Officers.....	22
Qualifications of Impartial Hearing Officers.....	23
Standards of Practice	24
Training of Hearing Officers	24
REPORTING OF DISPUTE RESOLUTION DATA.....	25
APPENDIX A: COACHING QUESTIONS.....	26



DUE PROCESS COMPLAINTS & HEARINGS

In order to request a due process hearing under Part C of the IDEA in States choosing to adopt Part B procedures, a parent, early intervention services (EIS) provider, Lead Agency, or the attorney representing a party, first must file a due process complaint consistent with 34 C.F.R. §§ [303.440](#) and [303.441](#).

The IDEA uses the term “complaint” to mean two different processes: 1) a written State complaint; and 2) a due process complaint. Both processes seek to have an authority make a formal determination about the issues identified by the complainant. The State administrative complaint requires the State Lead Agency to investigate and rule on the allegations of IDEA violations, whereas a due process complaint requests a decision to be made by a hearing officer after an administrative hearing. For more information about written State complaints, see the *Written State Complaints Under Part C of IDEA* manual.

In addition to the IDEA dispute resolution processes of mediation, written State complaints, and due process complaints, many States adopt additional informal or early dispute resolution procedures and practices. While these additional procedures and practices can result in efficient and satisfactory outcomes, States must ensure that any informal or early dispute resolution procedures and practices in place do not deny or delay parental rights, or present obstacles to accessing the dispute resolution processes afforded under IDEA.

Coaching Question

- ***What informal dispute resolution procedures and practices does your State have in place?***
 - ***Is it clear that any informal procedures for resolving disputes are not a barrier, prerequisite, or a substitute for parents’ accessing their rights under the IDEA?***
-

Due Process Complaint May Be Filed On

Under 34 C.F.R. § [303.440\(a\)\(1\)](#), a due process complaint may be filed on any matters described in § [303.421\(a\)](#) relating to the:

- identification;
- evaluation;
- placement of the infant or toddler; or
- provision of early intervention services to the infant or toddler with a disability and their family under Part C.

Nothing precludes a parent from filing a different due process complaint on an issue separate from a due process complaint already filed [34 C.F.R. § [303.445\(c\)](#)]. LAs cannot deny a parent’s request for a due process hearing because they believe the issue has been previously adjudicated. This matter is an issue for the hearing officer to decide. [[OSEP Part C Self-Assessment: Dispute Resolution](#), November 2015].



Situations Where the LA or EIS Provider Do Not Have the Right to File

There are limited situations where the LA or EIS providers do *not* have the right to file a due process complaint, specifically concerning a parent's refusal to provide any consent that is required under 34 C.F.R. § [303.420\(a\)](#). This includes parental consent to:

- administer screening procedures to determine whether a child is suspected of having a disability;
- conduct evaluations and assessments of a child;
- provide early intervention services to the child under Part C;
- use of public benefits or insurance or private insurance if such consent is required under 34 C.F.R. § [303.520](#); and
- disclose personally identifiable information consistent with 34 C.F.R. § [303.414](#). [See 34 C.F.R. § [303.420\(c\)](#)].

Time Limitation for Filing a Due Process Complaint

Alleged violations must not have occurred more than two years prior to the date that the parent, LA, or EIS provider knew, or should have known, about the alleged action which forms the basis of the due process complaint, unless the State has adopted another explicit time limitation, or unless the parent was prevented from filing a due process complaint due to:

- specific misrepresentations by the LA or EIS provider stating it had resolved the problem which formed the basis for the due process complaint; or
- the LA or EIS provider's failed to provide the parent required information [34 C.F.R. § [303.443\(e\)](#) and [\(f\)](#)].

States, however, may adopt explicit time limitations for filing a due process complaint other than the two years [34 C.F.R. § [303.443\(e\)](#)]. The time limitation for filing a due process complaint used by the State, whether the IDEA timeline or the State-established timeline, must be included in the notice of procedural safeguards, which must be given to parents before the LA or EIS provider proposes or refuses to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services [34 C.F.R. §§ [303.421\(a\)](#) and [\(b\)\(3\)](#)].

FILING A DUE PROCESS COMPLAINT

In Part C, a due process complaint is generally filed with the State Lead Agency; in the event the filing is not with the State Lead Agency, the State's procedures and procedural safeguards notice must provide clear information about how to forward the due process complaint to the State Lead Agency (e.g., provide an address where the complaint should be sent) [[OSEP Part C Self-Assessment: Dispute Resolution](#), November 2015]. The party filing a due process complaint must also forward a copy of the due process complaint to the other party [34 C.F.R. § [303.441\(a\)\(1\)](#)].

Coaching Question

- ***How does your State ensure the other party confidentially receives a copy of the complaint?***
-

Required Information

The due process complaint must include:

- the name of the child;
- the address of the residence of the child;
- the name of the EIS provider serving the child;
- in the case of a child experiencing homelessness, available contact information for the child and the name of the EIS provider serving the child;
- a description of the nature of the problem relating to the proposed or refused initiation or change, including relevant facts; and
- a proposed resolution of the problem to the extent known and available to the party at the time [34 C.F.R. § [303.441\(b\)](#)].

States should clearly identify the content that must be included in the due process complaint [[OSEP Part C Self-Assessment: Dispute Resolution](#), November 2015].

Model Forms

Although not required under Part C of the IDEA, OSEP encourages State Lead Agencies to develop model forms to assist parents in filing a due process complaint in accordance with 34 C.F.R. §§ [303.440](#) and [303.441](#). However, States may not have policies or procedures that require complainants to use a model form. States can only require parties to provide the information included in § [303.441\(b\)](#) as part of a due process complaint. Any other information requested must be specified as optional for the complainant. [[OSEP Part C Self-Assessment: Dispute Resolution](#), November 2015].

Coaching Questions

- *Does your State have a model form to assist parents in filing a due process complaint?*
- *Is your State's model form easy to understand?*
- *Is your State's model form accessible?*
- *What considerations are made for non-English speakers?*
- *Is it clear that the model forms are not required to file a due process complaint?*

States must have procedures that require the party filing the due process complaint, or the attorney representing the party, to forward a copy of the complaint to the Lead Agency [34 C.F.R. § [303.441\(a\)\(2\)](#)].





Support for Parents

The State Lead Agency must inform the parent of any free or low-cost legal and other relevant services available in the area if requested or when a due process complaint is filed [34 C.F.R. § [303.440\(b\)](#)]. States may wish to share information for Parent Training and Information Centers (PTI), Community Parent Resource Centers (CPRC), and Protection and Advocacy Agencies (P&A) [[OSEP Part C Self-Assessment: Dispute Resolution](#), November 2015]. Some States train their hearing officers to ask parents at the first pre-hearing conference whether they have received the required information.


States may also wish to consider sharing or linking to [CADRE's Early Intervention family guides and companion videos](#) on due process and other DR options, as appropriate.

Coaching Questions

- ***What is available in your State to ensure that parents have access to information about dispute resolution options, including how to file a due process hearing request?***
-

Ways to Improve Access

Although early resolution of disputes is encouraged, it is also important to communicate clear, consistent, and accurate information about due process via multiple formats, (e.g., technical assistance, presentations, website, videos, brochures) so that informed decisions can be made. Minimize barriers to access by providing a due process complaint model form that is easy to understand, access, and submit.



Steps can be taken to improve access to any DR option.


Filing Electronically

States may establish procedures permitting a due process complaint to be filed electronically, including with an electronic signature. States considering accepting, or choosing to accept, electronic filings of due process complaints would need to ensure that there are appropriate safeguards to protect the integrity of the process.

Safeguards should:

- identify and authenticate a particular person as the source of the consent;
- be sufficient to ensure that a party filing a due process complaint electronically understands that the complaint has the same effect as if it were filed in writing; and
- ensure that the same confidentiality requirements that apply to written due process complaints apply to due process complaints filed electronically.

States must explain the due process procedures in the parent's procedural safeguards notice, including the criteria for determining when the State considers the date of receipt for a due process complaint and whether the notices may be filed electronically. This would include how a State determines the date of receipt of an electronic complaint sent after business hours, on holidays, or weekends.



States may permit, but cannot require in-person or hand delivery of due process complaints [[OSEP Part C Self-Assessment: Dispute Resolution](#), November 2015].

States that are considering, or have chosen to accept, due process complaints filed electronically should also consult any relevant State laws governing electronic transactions [See [OSEP Memo Q&A on Dispute Resolution \(2013\)](#), C7 for more information on filing electronically].

Coaching Questions

- ***Does your State have a process that allows for electronic filing? If not, what steps might your State take to move toward an electronic filing provision?***

Sufficiency of the Complaint

Hearing officers have complete authority to determine the sufficiency of all due process complaints and their jurisdiction over issues raised. States may not dismiss a due process complaint or limit the issues that can be raised in a due process complaint [34 C.F.R. § [303.441\(d\)\(2\)](#)].

The due process complaint must be deemed sufficient, unless within 15 days of receiving the complaint, the receiving party notifies the other party and the hearing officer in writing that they believe the complaint does not meet the content requirements in 34 C.F.R. § [303.441\(d\)\(1\)](#), as stated previously. The hearing officer then has five days from when they receive the sufficiency challenge to determine, based solely on the face of the due process complaint (briefs are not allowed), if the complaint is sufficient. The hearing officer must immediately notify the parties in writing of that determination [34 C.F.R. § [303.441\(d\)\(2\)](#)].

States should clarify in their procedures and/or trainings for hearing officers whether, if found insufficient, a complaint should be dismissed or whether they should give the party filing the complaint a specific time to submit an amended complaint addressing the insufficiency. If the party does not file an amended complaint by the timeline in the hearing officer's sufficiency determination, the written order should make it clear that the insufficient complaint will be dismissed.

Amending the Complaint

A party may amend the due process complaint only if the other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution meeting held under 34 C.F.R. § [303.442](#), or the hearing officer grants permission to amend the complaint at any time not later than five days before the due process hearing begins [34 C.F.R. § [303.441\(d\)\(3\)](#)]. If a party files an amended due process complaint, the timelines for the resolution meeting and resolution period begin again with the filing of the amended due process complaint [34 C.F.R. § [303.441\(d\)\(4\)](#)].

Tracking Receipt of Complaint

States must have procedures, which may be determined by State laws, to determine when due process complaints are received [[OSEP Part C Self-Assessment: Dispute Resolution](#), November 2015]. While the States have some discretion in making this determination, the procedures must allow for the timely resolution of due process complaints and due process hearings. These procedures must be uniformly applied, consistent with 34 C.F.R. §§ [303.442](#) and [303.447](#).



CHILD'S STATUS DURING PROCEEDINGS

During the pendency of any proceeding regarding a due process complaint, unless the LA and the parents of the infant or toddler agree otherwise, the child involved in the complaint must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents. [34 C.F.R. § [303.430\(e\)\(1\)](#)]. This is commonly referred to as the “stay put” provision.

If the complaint involves an application for initial services under Part C, the child must receive those services that are not in dispute [34 C.F.R. § [303.430\(e\)\(2\)](#)].

RESPONDING TO DUE PROCESS COMPLAINTS

Other Party Response to a Due Process Complaint

When a party receives a due process complaint, they must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint, except as described under the section “LA Response When the LA Did Not Send a Prior Written Notice.” [34C.F.R. § [303.441\(f\)](#)].

LA Response When the LA Did Not Send a Prior Written Notice

If the LA has not sent a prior written notice under 34 C.F.R. § [303.421](#) to the parent regarding the subject matter contained in the parent’s due process complaint, the LA or EIS provider must, within 10 days of receiving the due process complaint, send to the parent a response that includes:

- an explanation of why the Lead Agency or EIS provider proposed or refused to take the action raised in the due process complaint;
- a description of other options that the IFSP Team considered and the reasons why those options were rejected;
- a description of each evaluation procedure, assessment, record, or report the Lead Agency or EIS provider used as the basis for the proposed or refused action; and
- a description of the other factors that are relevant to the Lead Agency or EIS provider’s proposed or refused action.

The requirement to file a response does not preclude the LA from asserting that the parent’s due process complaint was insufficient, where appropriate [34 C.F.R. § [303.441\(e\)\(2\)](#)].

PRE-CONFERENCE HEARINGS

While not required under the IDEA, States may require through State law or procedure that the hearing officer hold a pre-hearing conference with the parties as long as the practices do not conflict with due process requirements under the IDEA.



TIMELINE FOR RESOLUTION OF DUE PROCESS HEARINGS

The State Lead Agency may adopt a 30- or 45-day timeline, subject to 34 C.F.R. § [303.447\(a\)](#), for the resolution of due process complaints and must specify in its written procedural safeguards under 34 C.F.R. § [303.123](#) and in its prior written notice under 34 C.F.R. § [303.421](#), the specific timeline it has adopted [34 C.F.R. § [303.440\(c\)](#)].

Coaching Question

- ***Is the specific timeline your State has adopted included in your State's policies and procedures, procedural safeguards, and prior written notice?***
-

RESOLUTION PERIOD

IDEA provides a 30-day resolution period prior to the initiation of a due process hearing [34 C.F.R. § [303.442\(b\)](#)]. The purpose of the resolution period is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the Lead Agency has the opportunity to resolve the dispute that is the basis for the due process complaint [34 C.F.R. § [303.442\(a\)\(2\)](#)].

Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §303.443, the lead agency must convene a meeting with the parent and the relevant member or members of the IFSP Team who have specific knowledge of the facts identified in the due process complaint [34 C.F.R. § [303.442\(a\)\(1\)](#)]. For more information on resolution meetings, see pages 14-15.

At the expiration of the 30-day resolution period, the 30- or 45-day timeline for issuing a final decision under 34 C.F.R. § [303.447](#) begins, unless adjustments to the resolution period have been made [34 C.F.R. § [303.442\(b\)\(2\)](#)].

Adjustments to the Resolution Period

The 30- or 45-day timeline for the due process hearing adopted by the State Lead Agency under 34 C.F.R. § [303.440\(c\)](#) starts the day after one of the following events:

- both parties agree in writing to waive the resolution meeting;
- after either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or Lead Agency withdraws from the mediation process [34 C.F.R. § [303.442\(c\)](#)].

As part of the State’s general supervisory responsibility, the LA must ensure that due process hearing decision timelines are properly calculated and enforced. Therefore, the LA must establish a mechanism for tracking the resolution process to determine when the resolution period has concluded and the 30- or 45-day due process hearing timeline in 34 C.F.R. § [303.447\(a\)](#) begins.

States must have a system in place to track when the 30-day or adjusted resolution period ends.

Coaching Questions

- *How is the hearing officer informed of any adjustments to the timelines? Some States give that responsibility to the parties, however that doesn’t always happen in a timely fashion. Other State Lead Agencies may inform the hearing officer directly. What is the process in your State?*
 - *How is the LA tracking adjustments to the timelines?*
-

Written Settlement Agreements

If a resolution to the dispute is reached at the resolution meeting, the parties must execute a legally-binding agreement which is signed by both the parent and a representative of the Lead Agency who has the authority to bind the agency. These agreements are enforceable in any State court of competent jurisdiction or in a district court of the United States, or by the State Lead Agency, if the State has other mechanisms or procedures, such as their State written complaint procedures, which permit parties to seek enforcement of resolution agreements [34 C.F.R. § [303.442\(d\)](#)].

Use of other mechanisms or procedures may not be mandatory nor delay or deny a party the right to seek enforcement of the settlement agreement in a State court of competent jurisdiction or in a district court of the United States. If other mechanisms or procedures are used, they should be clearly established in your State’s policy and procedure as well as your procedural safeguards to ensure consistent implementation and to inform parties of the availability of this mechanism.

RESOLUTION MEETINGS

Timeline for Convening a Resolution Meeting

The Lead Agency within 15 days of receiving the parent’s complaint must convene a resolution meeting with the parent and the relevant member or members of the IFSP Team who have specific knowledge of the facts identified in the due process complaint [34 C.F.R. § [303.442\(a\)](#)]. The Lead Agency must proceed with the resolution meeting even if it has challenged the sufficiency of the parent’s due process complaint. The IDEA does not require the Lead Agency to convene a resolution meeting if the Lead Agency or EIS provider are the complaining party [[OSEP Part C Self-Assessment: Dispute Resolution, November 2015](#)].



Resolution Meeting

During a resolution meeting, the parties discuss the complaint and the facts that form the basis of the complaint so that the Lead Agency has an opportunity to resolve the dispute. The parent and the Lead Agency determine the relevant members of the IFSP Team to attend the resolution meeting [34 C.F.R. § [303.422\(a\)\(4\)](#)]. The meeting must include the parent and the relevant member or members of the IFSP Team who have specific knowledge of the facts identified in the due process complaint, and include a representative of the Lead Agency who has decision-making authority [34 C.F.R. § [303.422\(a\)\(1\)](#)]. An attorney representing the Lead Agency cannot attend the resolution meeting unless the parent is accompanied by an attorney [34 C.F.R. § [303.422\(a\)\(1\)\(ii\)](#)].

Waiving a Resolution Meeting

A resolution may only be waived if: (1) both parties agree in writing to waive the the resolution process; or (2) the parent and Lead Agency agree to use the mediation process under 34 C.F.R. § [303.431](#) [34 C.F.R. § [303.422\(a\)\(3\)](#)].

Failure to Hold a Resolution Meeting

If the Lead Agency fails to hold the resolution meeting within 15 days of receiving notice of a parent’s due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline [34 C.F.R. § [303.442\(b\)\(5\)](#)].

If the Lead Agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, including documenting its efforts, the Lead Agency may, at the conclusion of the 30-day period, request that the hearing officer dismiss the parent’s due process complaint [34 C.F.R. § [303.442\(b\)\(4\)](#)]. If the Lead Agency requests the hearing officer to dismiss the parent’s due process complaint pursuant to 34 C.F.R. § [303.442\(b\)\(4\)](#), it would be up to the hearing officer to determine whether the Lead Agency has made reasonable efforts to obtain the participation of the parent in the resolution meeting. Although 34 C.F.R. § [303.442\(b\)\(4\)](#) provides the Lead Agency with the option to request dismissal, the Lead Agency is not required to request a dismissal and may agree instead to an extension of the time to conduct a resolution meeting in order for the parties to continue mediation efforts. Both the Lead Agency’s option to request dismissal and the impartial hearing officer’s determination ensures that dismissal of a due process complaint is based on case-specific circumstances [[76 Federal Register, September 28, 2011](#), pg. 60218].

Confidentiality and the Resolution Meeting

Unlike mediation, the IDEA does not keep the resolution discussions confidential, and such discussions may be admitted in a due process hearing or civil proceeding.

Agreement Review Period

A party may void the resolution agreement within three business days of the agreement’s execution [34 C.F.R. § [303.442\(e\)](#)].

Impact of Agreement on Due Process Complaint

The Part C regulations do not address the status of the due process complaint or which party is responsible for requesting that the due process complaint be dismissed or withdrawn once a resolution agreement is reached and the three-business-day review period has passed. Such matters are left to the discretion of the State and the hearing officer.

Under standard legal practice, although not specified in IDEA regulations, the requesting party would submit a written withdrawal of their due process complaint, although the resolution agreement need not be sent to the hearing officer.



The hearing officer would then issue a written dismissal order and send it to the parties and the State’s dispute resolution person.

If No Agreement Was Reached During the Resolution Meeting

If no agreement was reached during the resolution meeting, the parties may have additional discussions and may execute a written settlement agreement within the 30-day resolution period. Only a legally-binding agreement reached during the 30-day period which meets the requirements of 34 C.F.R. §§ [303.442\(d\)](#) and [\(e\)](#) is considered an agreement under the resolution process requirements.

Coaching Questions

- ***What procedures are in place to track whether a written agreement was reached during the resolution period?***

After the 30-day resolution period, parties may choose to enter into private settlement agreements which resolve some or all of the issues in the due process complaint and may result in the petitioner’s withdrawal of a due process complaint. These agreements would not be considered “resolution agreements” for the purposes of LA reporting.

MEDIATION

Mediation is an impartial and voluntary process which brings together parties who have a dispute concerning any matter arising under 34 C.F.R. part 303 (the Part C of the IDEA (Part C) regulations) to have confidential discussions with a qualified and impartial individual. The goal of mediation is for the parties to resolve the dispute and execute a legally binding written agreement reflecting that resolution. Mediation may not be used to deny or delay a parent’s right to a hearing on the parent’s due process complaint or to deny any other rights afforded under Part C [34 C.F.R. §§ [303.431\(b\)\(1\)](#) and [\(7\)](#)].

States must have procedures to offer mediation to resolve disputes concerning any matter arising under Part C of the IDEA, including matters arising prior to the filing of a due process complaint.

Mediation During the Resolution Period

Parties may choose to engage in mediation during the 30-day resolution period. The resolution period may be adjusted if both parties agree in writing to continue with the mediation process after the 30-day resolution period. If this occurs, the 30- or 45-day due process hearing timeline does not begin until one of the parties withdraws from the mediation process or the parties agree in writing that no agreement can be reached through mediation [34 C.F.R. §§ [303.442\(c\)\(2\)](#) and [\(3\)](#)]. States must have a system in place to track when the 30-day or adjusted resolution period ends, to ensure accurate calculation of the start of the 30- or 45-day hearing timeline [[OSEP Part C Self-Assessment: Dispute Resolution, November 2015](#)]. Tracking mediations that occur during the resolution period, as well as the outcomes of those mediations, are essential components to be included in the tracking system.

Coaching Questions

- *How does your State offer mediation to parties as a result of a filed due process complaint?*
 - *For the purpose of tracking data, how does the State Lead Agency become informed about: 1) when parties agree to mediation; 2) if parties agree to adjusting the resolution period in order to continue mediation; 3) if a mediation ends in an agreement; or 4) if a party withdraws from the mediation?*
-

Mediation Discussions are Confidential

All discussions that occur in mediation, including negotiation and any settlement discussions, are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding [34 C.F.R. § [303.431\(b\)\(5\)\(i\)](#)].

IMPARTIAL DUE PROCESS HEARINGS

Following the resolution period, or waiver of the resolution period, a due process complaint proceeds to a due process hearing, consistent with the procedures in §§ [303.440 through 303.442](#) [34 C.F.R. § [303.443\(a\)](#)].

The hearing must be conducted by the Lead Agency directly responsible for the early intervention services of the infant or toddler [34 C.F.R. § [303.443\(b\)](#)].

Subject Matter of the Hearing

The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under 34 C.F.R. §§ [303.441\(b\)](#), unless the other party agrees otherwise. [34 C.F.R. § [303.443\(d\)](#)] The hearing officer has discretion, in light of the particular facts and circumstances, whether to address issues raised by the non-complaining party which were not in the complaint.

Extensions of the Timelines

At the request of either party, a hearing or reviewing officer may grant specific extensions of the timelines [34 C.F.R. § [303.447\(c\)](#)]. If a hearing or reviewing officer decides to grant an extension at the request of a party, the hearing or reviewing officer must extend the timeline for a specific period of time. A hearing or review officer may not unilaterally extend the timelines without a request [[OSEP Part C Self-Assessment: Dispute Resolution, November 2015](#)]. Extensions must be documented and communicated to the Lead Agency in a timely manner. The timelines must be tracked accordingly.

Coaching Questions

- *What mechanisms does your State have in place to communicate extensions to the Lead Agency?*
 - *How does the Lead Agency ensure that extensions are granted appropriately?*
-

If an extension is granted, the State must document all parts of the extension (e.g., when it was granted, the reason(s) for the extension, the specific length of the extension) and ensure timelines are met.

**Document All
Parts of the
Extension.**

HEARING RIGHTS

Any party to a hearing conducted pursuant to 34 C.F.R. §§ [303.440 through 303.445](#), or an appeal conducted pursuant to 34 C.F.R. § [303.446](#), has the right to:

- be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of infants and toddlers with disabilities;
- present evidence and confront, cross-examine, and compel the attendance of witnesses;
- prohibit the introduction of any evidence at the hearing which has not been disclosed to that party at least five business days before the hearing*;
- obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and
- obtain written or, at the option of the parents, electronic findings of fact and decisions [34 C.F.R. § [303.444\(a\)](#)].

*At least five business days prior to a hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations which the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party [34 C.F.R. § [303.444\(b\)](#)].



Parental Rights at Hearings

Parents involved in hearings must be given the right to: 1) open the hearing to the public; and 2) have the record of the hearing and the findings of fact and decision at no cost to the parents [34 C.F.R. § [303.444\(c\)](#)]. These issues must be clarified prior to the start of the hearing.

Convenience

Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved [34 C.F.R. § [303.447\(d\)](#)]. Additionally, the location of each hearing and each review should be free from distraction and accessible.

Several States now offer virtual hearings when in-person hearings are not possible. To learn more about virtual hearings, see CADRE’s webinar, [Due Process in a Quarantined World: The Nuts and Bolts of Effective Virtual Hearings](#).

Accommodations

The IDEA specifically requires that certain documents be translated into the parent’s native language “unless it is clearly not feasible to do so” [34 C.F.R. §§ [303.421\(c\)](#)]. There is no such provision under the IDEA addressing due process hearings.

The U.S. Department of Justice guidance holds that Title VI of the Civil Rights Act of 1964 prohibits discrimination based on national origin and requires that certain documents are translated. Title VI regulations require that recipients of Federal funds “take reasonable steps” to “provide information in appropriate languages” to persons with limited-English proficiency (LEP) so that they are effectively “informed of” or able to “participate in” the recipient’s program [[28 C.F.R. 42.405\(d\)\(1\)](#)].


Coaching Questions

- ***Does your State allow parties the right to be represented by non-attorneys at due process hearings?***
 - ***Does the hearing officer training in your State address the hearing officer’s process and authority for enforcing a subpoena issued to compel the attendance of witnesses?***
 - ***What is the process for the creation of a verbatim record (electronic or written) for the parent?***
-

HEARING DECISIONS

Decision of the Hearing Officer

A hearing officer’s determination of whether an infant or toddler was appropriately identified, evaluated, or placed, or whether the infant or toddler with a disability and his or her family were appropriately provided early intervention services under Part C of the IDEA, must be based on substantive grounds. In matters alleging a procedural violation, a



hearing officer may find that a child was not appropriately identified, evaluated, placed, or provided early intervention services under Part C of the IDEA only if the procedural inadequacies:

- impeded the child’s right to identification, evaluation, and placement or provision of early intervention services for the child and that child’s family;
- significantly impeded the parent’s opportunity to participate in the decision-making process; or
- caused a deprivation of educational or developmental benefit.

This, however, does not preclude a hearing officer from ordering a Lead Agency or EIS provider to comply with procedural requirements under 34 C.F.R. §§ [303.400 through 303.449](#) [34 C.F.R. § [303.445\(a\)](#)]. Note: 34 C.F.R. §§ [303.400 through 303.449](#) address only the procedural safeguards in the IDEA and not other procedural issues.

Finality of the Decision

A decision made in a due process hearing is final, except that any party involved in the hearing may appeal the decision [34 C.F.R. § [303.446\(a\)](#)].

If the State permits reconsideration, the State’s written hearing procedures or State rules must include a provision which permits reconsideration of due process decisions, and parties should be notified that they can request reconsideration of the hearing officer’s decision. If the State permits either party to request reconsideration of the hearing officer’s decision (prior to filing a civil action), the reconsideration process must be completed so that the final decision is issued within the 30- or 45-day timeline or a properly extended timeline [[OSEP Part C Self-Assessment: Dispute Resolution, November 2015](#)].

Enforcing the Decision


As part of the State’s general supervisory responsibility under 34 C.F.R. § [303.120\(a\)](#), the State must ensure that hearing officer decisions, or reviewing officer decisions, if applicable, are implemented within the timeline specified by the hearing officer or reviewing officer, or if there is no specific timeline articulated in the decision within a reasonable timeframe set by the State (unless either party appeals the decision) [[OSEP Part C Self-Assessment: Dispute Resolution, November 2015](#)].

A State must examine every due process hearing decision to determine if the decision identifies any procedural and/or substantive violations of the IDEA [[Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the State Performance Plan \(SPP\)/Annual Performance Report \(APR\), OSEP, September 3, 2008](#), Question 6]. If noncompliance that requires corrective action is identified, the State Lead Agency must ensure that the corrective action is implemented [[OSEP Part C Self-Assessment: Dispute Resolution, November 2015](#)].

Additionally, the State must account for all noncompliance, whether collected through the State’s on-site monitoring system, other monitoring processes such as self-assessment or desk review of records, State complaint or due process hearing decisions, data system, or statewide representative sample or 618 data [[Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the State Performance Plan \(SPP\)/Annual Performance Report \(APR\), OSEP, September 3, 2008](#), Question 5. See also: [OSEP Memo 09-02](#)].

Timeliness and Tracking of the Decision

The State must ensure a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties no later than 30 or 45 days after the expiration of the 30-day period under 34 C.F.R. § [303.442\(b\)](#) or the adjusted time periods described in 34 C.F.R. § [303.442\(c\)](#) [34 C.F.R. § [303.447\(a\)](#)].



OSEP encourages States to maintain a log to track due process complaints and hearings. The log can be used to ensure that due process complaints are resolved, and resolution sessions, when applicable, are held in a timely manner. The log can also be used to facilitate the collection of information which must be reported under Section 618 and 635(a)(14) of the IDEA [[OSEP Part C Self-Assessment: Dispute Resolution, November 2015](#)]. See the section Reporting of Dispute Resolution Data on page 25.

A number of States have procured or internally developed a case management and data system software solution to assist with the administration of due process complaints and hearings. These software solutions vary, but many have features to facilitate due process complaint submissions, hearing officer assignments, and the tracking of due process cases.

Review Process for States with a Two-tiered System

If a State has a two-tiered system, any party aggrieved by the findings and decision in the hearing may appeal to the State Lead Agency [34 C.F.R. § [303.446\(b\)\(1\)](#)].

If there is an appeal, the State must conduct an impartial review of the findings and decision appealed. The official conducting the review must:

- examine the entire hearing record;
- ensure that the procedures at the hearing were consistent with the requirements of due process;
- seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in 34 C.F.R. § [303.444](#) apply;
- afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
- make an independent decision on completion of the review; and
- give a copy of the written or, at the option of the parents, electronic findings of fact and decisions to the parties [34 C.F.R. § [303.446\(b\)\(2\)](#)].

The decision made by the reviewing official is final unless a party brings a civil action under 34 C.F.R. § [303.448](#) [34 C.F.R. § [303.446\(d\)](#)].

Following a request for a review of a final decision, the State must ensure that a final decision in the review and a copy of the decision is mailed to each of the parties no later than 30 days after the receipt of a request for a review of a final decision [34 C.F.R. § [303.447\(b\)](#)].

Coaching Questions

- ***What tracking procedures are in place to ensure that hearing decisions and, if applicable, hearing reviews, are completed within IDEA timelines for decisions?***
-

CIVIL ACTION



Any party aggrieved by the findings and hearing decision who does not have the right to an appeal under 34 C.F.R. § [303.446\(b\)](#), and any party aggrieved by the findings and review decision under 34 C.F.R. § [303.446\(b\)](#), has the right to bring a civil action with respect to the due process complaint [34 C.F.R. §[303.448\(a\)](#)].

The civil action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy [34 C.F.R. § [303.448\(a\)](#)]. The district courts of the United States have jurisdiction of actions brought under section 615 of the IDEA without regard to the amount in controversy [34 C.F.R. § [303.448\(d\)](#)].

Time Limitation

The party bringing the action shall have 90 days from the date of the decision of the hearing officer or if applicable, the decision of the State review official, to file a civil action, or if the State has an explicit time limitation for bringing civil actions under Part C of the IDEA, in the time allowed by that State law [34 C.F.R. § [303.448\(b\)](#)].

If the State has an explicit time limitation for bringing civil actions under Part C of the IDEA, the State must include this information about the timeline for civil action in the procedural safeguards notice [[OSEP Part C Self-Assessment: Dispute Resolution, November 2015](#)].

Additional Requirements

In a civil action under Part C of the Act, the court:

- receives the records of the administrative proceedings;
- hears additional evidence at the request of a party; and
- basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate [34 C.F.R. § [303.448\(c\)](#)].

Nothing in this part restricts or limits the rights, procedures, and remedies available under other Federal laws, with the exception that before filing a civil action under these laws which are also available under section 615 of the Act, the procedures under 34 C.F.R. §§ [303.440](#) and [303.446](#) must be exhausted to the same extent as would be required had the action been brought under section 615 of the IDEA [34 C.F.R. § [303.448\(e\)](#)].

Findings and Decision to Advisory Panel and General Public

The Lead Agency responsible for conducting the hearing, after deleting any personally identifiable information, must make those findings and decisions available to the public [34 C.F.R. § [303.445\(d\)](#)].

Personally Identifiable Information Defined

- The name of the child, the child’s parent, or other family member;
- The address of the child;
- A personal identifier, such as the child’s social security number or child number; or
- A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty [34 C.F.R. § 303.29].



Lead agencies may choose to also provide summaries of findings and decisions, in addition to the complete findings and decisions. Due process hearing findings and decisions must be made available to the public within a reasonable period of time. States may not require a public records/freedom of information request to make the findings and decisions available [[OSEP Part C Self-Assessment: Dispute Resolution, November 2015](#)]. A Lead Agency may meet these requirements by posting the redacted decisions on its website or another website location dedicated for this purpose and directing members of the public to that information.

If a State has a two-tiered due process system and the decision is appealed, the State Lead Agency, after deleting any personally identifiable information, must make those findings and decisions in the review available to the public [34 C.F.R. § [303.446\(c\)](#)].

CONSIDERATIONS FOR OPERATIONALIZING THE QUALIFIED IMPARTIAL HEARING OFFICER REQUIREMENT

One-tiered or Two-tiered State System


States that have adopted Part B procedures may adopt a one-tiered or two-tiered due process system. In a one-tiered system, the State Lead Agency is responsible for conducting the due process hearing, and an appeal from a due process hearing decision goes directly to court. In a two-tiered due process system, the State Lead Agency is responsible for conducting the due process hearing, and an appeal of a due process hearing decision is made to a state-level hearing review officer, prior to appealing to court.

- In a one-tiered system, appeals are brought directly to Federal or State court.
- In a two-tiered system, an aggrieved party may appeal the hearing decision to the State Lead Agency.

States must clearly indicate if they have adopted a two-tier due process hearing system and include this information in its procedural safeguards [[OSEP Part C Self-Assessment: Dispute Resolution, November 2015](#)]. Whether in a one- or two-tiered State, the State Lead Agency must ensure hearing officers are qualified.

Maintaining a Roster of Hearing Officers

States have different processes to secure a roster of hearing officers, such as:

- 
- using a central panel to manage the cases and provide Administrative Law Judges (ALJs); or
 - contracting with Independent Hearing Officers (IHOs).

Each State Lead Agency must keep a list of the persons who serve as hearing officers [34 C.F.R. § [303.443\(c\)\(3\)](#)]. OSEP’s implementation guidance states that LAs must have more than one individual on their list of hearing officers [[OSEP Part C Self-Assessment: Dispute Resolution, November 2015](#)].

Coaching Questions

- ***How will the State Lead Agency monitor timelines and otherwise ensure IDEA compliance?***
 - ***Is there an interagency agreement in place with procedural expectations clarified?***
-

Qualifications of Impartial Hearing Officers

Each State Lead Agency must keep a list of the persons who conduct due process hearings, including their qualifications [34 C.F.R. § [303.443\(c\)\(3\)](#)].

At a minimum, a hearing officer must:

- not be an employee of the Lead Agency involved in the early intervention or care of the infant or toddler. Note: A person is not considered an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer [34 C.F.R. § [303.4433\(c\)\(2\)](#)];
- not be a person having a personal or professional interest that conflicts with the person’s objectivity in the hearing;
- possess knowledge of and the ability to understand the provisions of the IDEA, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;
- possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
- possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice [34 C.F.R. § [303.433\(c\)\(1\)](#)].

Note: The State Lead Agency is ultimately responsible for ensuring IDEA compliance of their due process complaint and hearing system, regardless of if another agency provides a central panel of Administrative Law Judges to conduct the hearings.

Coaching Questions

- *What are the recruitment and appointment procedures in your State to ensure hearing officers are impartial and meet required qualifications?*
-

Standards of Practice

To ensure hearing officers adhere to Federal and State regulations, some States create procedures and implement standards of practice on their roster for the hearing officers to follow.

Coaching Questions

- *Does your State's hearing officer contracts specify their IDEA responsibilities, as well as the responsibilities of the EIS provider (e.g., transmission of the record, communicating schedule notifications)?*
 - *What mechanisms does your State use to monitor timelines, address any issues, and evaluate hearing officers prior to renewing contracts?*
-

Training of Hearing Officers

States have the discretion to determine the required training and frequency of training for hearing officers. While States cannot review decisions for the purpose of seeing if the decisions are “correct,” and States do not have the authority to change a hearing officer’s decision, decisions that have been issued should be reviewed to identify hearing officer training needs.

Coaching Questions

- *What initial and ongoing training and support is provided to hearing officers to ensure necessary knowledge of Part C of IDEA?*
-

REPORTING OF DISPUTE RESOLUTION DATA

State Lead Agency data managers submit to Office of Special Education Programs (OSEP) their annual State data via EMAPS showing that the IDEA is being implemented. There are 12 data collections authorized under Section 618 of the IDEA, which include the State’s Part C Dispute Resolution data.

In November, LAs submit the previous year’s data, ending on June 30. OSEP reviews the reported data for quality issues and provides feedback. LAs submit their finalized data, generally the following May. It is important to note that only actions initiated during that reporting year are reported. Actions initiated in a previous reporting year that continued into the current reporting year are not included in the current counts. For more detailed instructions, view [OSEP’s ED Facts Initiative](#). In addition to reporting on mediation and State complaints, LAs report data on due process complaints and hearings (Section 3).

IMPORTANT! Report only the actions initiated during the reporting year. Do NOT include actions initiated in a previous reporting year that continued into the current reporting year.

Specifically for due process activity, LAs following Part B procedures report:

Variable Reported	Explanation
3. Total number of due process complaints filed	Total number of due process complaints filed between July 1 and June 30.
3.1 Resolution meetings	The number of due process complaints (from row 3) that resulted in a resolution meeting as of the end of the reporting period (June 30)
3.1 (a) Written settlement agreements reached through resolution meetings	The number of resolution meetings that resulted in a written settlement agreement as of the end of the reporting period. <i>Note: States should include all written settlement agreements reached through resolution meetings during the 30-day resolution period. This includes written settlements finalized during a resolution meeting, as well as those finalized after the meeting, as long as they are finalized during the 30-day resolution period</i>
3.2 Hearings fully adjudicated	The number of the due process complaints (row 3) that resulted in hearings fully adjudicated as of the end of the reporting period; that is, the due process hearing was conducted, and the hearing officer issued a written decision by June 30
3.2 (a) Decisions within timeline	The written decisions included in row (3.2) that were decisions within timeline. (Do not include here the decisions within extended timelines.)
3.2 (b) Decisions within extended timeline	The number of the written decisions included in row 3.2 that were decisions within extended timelines. (Decision must be issued within specific time extension granted by the hearing or reviewing officer)
3.3 Hearings pending	The number of due process complaints (from row 3) that were hearings pending as of the end of the reporting period (June 30)
3.4 Due process complaints withdrawn or dismissed (including resolved without a hearing)	The number of due process complaints (from row 3) that were withdrawn or dismissed (including resolved without a hearing) as of the end of the reporting period (June 30)



APPENDIX A: COACHING QUESTIONS

DUE PROCESS COMPLAINTS AND HEARINGS

- ❖ *What informal dispute resolution procedures and practices does your State have in place?*
- ❖ *Is it clear that any informal procedures for resolving disputes are not a barrier, prerequisite, or a substitute for parents' accessing their rights under the IDEA?*

FILING A DUE PROCESS COMPLAINT

- ❖ *How does your State ensure the other party confidentially receives a copy of the complaint?*

Model Forms

- ❖ *Does your State have a model form to assist parents in filing a due process complaint?*
 - *Is your State's model form easy to understand?*
 - *Is your State's model form accessible?*
 - *What considerations are made for non-English speakers?*
 - *Is it clear that the model forms are not required to file a due process complaint?*

Support for Parents

- ❖ *What is available in your State to ensure that parents have access to information about dispute resolution options, including how to file a due process hearing request?*

Filing Electronically

- ❖ *Does your State have a process that allows for electronic filing? If not, what steps might your State take to move toward an electronic filing provision?*

TIMELINE FOR RESOLUTION OF DUE PROCESS HEARINGS

- ❖ *Is the specific timeline your State has adopted included in your State's policies and procedures, procedural safeguards, and prior written notice?*

RESOLUTION PERIOD

Adjustments to the Resolution Period

- ❖ *How is the hearing officer informed of any adjustments to the timelines? Some States give that responsibility to the parties, however that doesn't always happen in a timely fashion. Other State Lead Agencies may inform the hearing officer directly. What is the process in your State?*
- ❖ *How is the LA tracking adjustments to the timelines?*



RESOLUTION MEETINGS

If No Agreement Was Reached During the Resolution Meeting

- ❖ *What procedures are in place to track whether a written agreement was reached during the resolution period?*

MEDIATION

Mediation During the Resolution Period

- ❖ *How does your State offer mediation to parties as a result of a filed due process complaint?*
- ❖ *For the purpose of tracking data, how does the State Lead Agency become informed about: 1) when parties agree to mediation; 2) if parties agree to adjusting the resolution period in order to continue mediation; 3) if a mediation ends in an agreement; or 4) if a party withdraws from the mediation?*

IMPARTIAL DUE PROCESS HEARINGS

Extension of the Timelines

- ❖ *What mechanisms does your State have in place to communicate extensions to the Lead Agency?*
- ❖ *How does the Lead Agency ensure that extensions are granted appropriately?*

HEARING RIGHTS

- ❖ *Does your State allow parties the right to be represented by non-attorneys at due process hearings?*
- ❖ *Does the hearing officer training in your State address the hearing officer's process and authority for enforcing a subpoena issued to compel the attendance of witnesses?*
- ❖ *What is the process for the creation of a verbatim record (electronic or written) for the parent?*

HEARING DECISIONS

- ❖ *What tracking procedures are in place to ensure that hearing decisions and, if applicable, hearing reviews, are completed within IDEA timelines for decisions?*

CONSIDERATIONS FOR OPERATIONALIZING THE QUALIFIED IMPARTIAL HEARING OFFICER REQUIREMENT

Maintaining a Roster of Hearing Officers

- ❖ *How will the State Lead Agency monitor timelines and otherwise ensure IDEA compliance?*
- ❖ *Is there an interagency agreement in place with procedural expectations clarified?*

Qualifications of Impartial Hearing Officers

- ❖ *What are the recruitment and appointment procedures in your State to ensure hearing officers are impartial and meet required qualifications?*



Standards of Practice

- ❖ *Does your State's hearing officer contracts specify their IDEA responsibilities, as well as the responsibilities of the EIS provider (e.g., transmission of the record, communicating schedule notifications)?*
- ❖ *What mechanisms does your State use to monitor timelines, address any issues, and evaluate hearing officers prior to renewing contracts?*

Training of Hearing Officers

- ❖ *What initial and ongoing training and support is provided to hearing officers to ensure necessary knowledge of Part C of IDEA?*