



STATE ADMINISTRATION OF EARLY INTERVENTION DUE PROCESS COMPLAINTS & HEARINGS

ADOPTING PART C PROCEDURES

34 C.F.R. §§ 303.435 through 303.438



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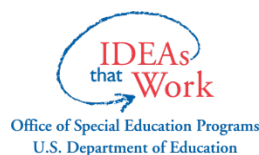
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ABOUT THIS RESOURCE

This publication was developed by CADRE, a project of Direction Service pursuant to Cooperative Agreement No. 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.

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 is required to establish, implement, and maintain procedural safeguards related to due process hearings. Part C Lead Agencies (LAs) 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 Lead Agencies who have adopted Part C 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.





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DUE PROCESS COMPLAINTS & HEARINGS

In order to request a due process hearing under Part C of the IDEA in States choosing to adopt Part C procedures, a parent first must file a due process complaint according to State procedures.

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 written State 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?*
-

Matters Subject to a Due Process Complaint

Under 34 C.F.R. § [303.430\(d\)\(1\)\(ii\)](#), a due process complaint may be filed on any matters described in 34 C.F.R. § [303.421\(a\)](#) relating to the:

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

Time Limitation for Filing a Due Process Complaint

Part C of the IDEA does not identify a time limit for filing. States, however, may adopt time limitations for filing a due process complaint. The time limitation for filing a due process complaint used by the State must be included in the notice of procedural safeguards, which must be given to parents before the Lead Agency 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

Under the Part C due process procedures, only a parent may file a due process hearing complaint [[OSEP Part C Self-Assessment: Dispute Resolution](#), November 2015]. Each Lead Agency must adopt written procedures that provide a means of filing a due process complaint and these procedures must be included in the notice of procedural safeguards [34 C.F.R. §§ [303.430\(d\)](#) and [\(b\)\(3\)](#)]. States must inform parents of what information to include in a due process complaint, such as the name of the child, the nature of the problem, and a proposed resolution.

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. However, States may not have policies or procedures that require complainants to use a model form. States must clearly indicate that the use of the model form is optional.

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?*
 - *How does your State communicate that their model form is optional?*
 - *If the model form requests additional information beyond what is required to file a due process complaint, is it clear that the information is optional to provide?*

Support for Parents

Although not required for States adopting Part C procedures, the Lead Agency may choose to inform the parent of any free or low-cost legal and other relevant services available in the area, as well as information for Parent Training and Information (PTI) Centers, Community Parent Resource Centers (CPRC), and Protection and Advocacy Agencies (P&A) [[OSEP Part C Self-Assessment: Dispute Resolution](#), November 2015].

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.

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 allow electronic filing of due process complaints? If so, how are parents made aware of this provision?*
-

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. §§ [303.437](#).

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 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\(e\)\(2\)](#)].



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.

TIMELINES

The State Lead Agency must ensure that, not later than 30 calendar days after the receipt of a parent's due process complaint, the due process hearing is completed and a written decision mailed to each of the parties [34 C.F.R. § [303.437\(b\)](#)].

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. § [303.437\(c\)](#)]. If a hearing or reviewing officer decides to grant an extension at the request of a party, the extension should be made for a specific period of time [[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?*
 - *What mechanisms does your State have in place to track extensions?*
-


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 in a timely manner [[OSEP Part C Self-Assessment: Dispute Resolution, November 2015](#)].

*Document All
Parts of the
Extension.*

PARENTAL HEARING RIGHTS

Any parent involved in a due process hearing has the right to:

- be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for 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 the parent at least five business days before the hearing;
 - obtain a written or electronic verbatim record of the hearing; and
 - obtain a written copy of the findings of fact and decisions at no cost to the parent [34 C.F.R. § [303.436\(b\)](#)].
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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 and provision of a written or electronic verbatim record of the hearing, and provision of a written copy of findings of fact and decisions?*
-

Convenience

Each hearing must be conducted at a time and place which is reasonably convenient to the parents [34 C.F.R. § [303.437\(a\)](#)]. Additionally, the location of each hearing and each review should be free from distraction and accessible.

Lead Agencies may permit hearings on due process complaints to be conducted through video conferences or conference calls if a hearing officer concludes that such procedures are consistent with legal practice in the State. A hearing conducted virtually must ensure a parent's right to an impartial due process hearing consistent with all requirements in 34 C.F.R. §§ 303.435 through 300.437 [[OSEP Q&A on Implementation of IDEA Part C during COVID-19 Pandemic, June 2020](#)]. 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\(d\)\(1\)](#)].



POST HEARING ACTIONS

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 are implemented within the timeline specified, 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](#)].

Enforcing Due Process Decisions through State Complaints

The Lead Agency must investigate any State complaints alleging the Lead Agency or EIS provider failed to implement a due process hearing decision [34 C.F.R. § [303.433\(c\)\(3\)](#)].

Coaching Questions

- *How does your State ensure that hearing officer decisions are implemented within a year of the decision?*
 - *What is your State’s process for investigating a State complaint alleging the LA or EIS provider failed to implement a DPH decision?*
 - *What mechanisms does your State have for tracking the enforcement of the implementation of the decision or corrective action?*
-

Civil Action

Any party aggrieved by the findings and hearing decision has the right to bring a civil action with respect to a due process complaint [34 C.F.R. § [303.438](#)].

IMPARTIAL HEARING OFFICER REQUIREMENT

When a due process complaint is received under 34 C.F.R. §303.430(d), a due process hearing officer must be appointed to implement the complaint resolution process.



Securing Hearing Officers

States adopting Part C procedures may find it beneficial to have a process in place to secure a roster of hearing officers. States often use a central panel to manage the cases and provide Administrative Law Judges (ALJs) or contract with Independent Hearing Officers (IHOs).

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 process does your State have in place for securing impartial hearing officers?*
- *Is there an interagency agreement in place with procedural expectations clarified?*
- *How will the State Lead Agency monitor timelines and otherwise ensure IDEA compliance?*

Qualifications of Impartial Hearing Officers

At a minimum, a hearing officer must have knowledge about IDEA under Part C and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families. They must also:

- listen to the presentation of relevant viewpoints about the due process complaint;
- examine all information relevant to the issues;
- seek to reach a timely resolution of the due process complaint;
- provide a record of the proceedings, including a written decision;
- 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; and
- not have a personal or professional interest that conflicts with the person's objectivity in the hearing [34 C.F.R. § [303.435](#)].

Coaching Questions

- *How does your State 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 for the hearing officers to follow.

Coaching Questions

- *Do 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?*
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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, Lead Agencies submit the previous year’s data, ending on June 30. OSEP reviews the reported data for quality issues and provides feedback. Lead Agencies 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 EDFacts Initiative](#). In addition to reporting on mediation and State complaints, Lead Agencies 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, Lead Agencies following Part C 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.
3.2 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

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?*
- ❖ *How does your State communicate that their model form is optional?*
- ❖ *If the form requests additional information beyond what is required to file a due process complaint, is it clear that the information is optional to provide?*

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 allow electronic filing of due process complaints? If so, how are parents made aware of this provision?*

TIMELINES

Extension of Timelines

- ❖ *What mechanisms does your State have in place to communicate extensions?*
- ❖ *What mechanisms does your State have in place to track extensions?*

PARENTAL 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 and provision of a written or electronic verbatim record of the hearing, and provision of a written copy of findings of fact and decisions?*



POST HEARING ACTIONS

- ❖ *How does your State ensure that hearing officer decisions are implemented within a year of the decision?*
- ❖ *What is your State's process for investigating a State complaint alleging the LA or EIS provider failed to implement a DPH decision?*
- ❖ *What mechanisms does your State have for tracking the enforcement of the implementation of the decision or corrective action?*

IMPARTIAL HEARING OFFICER REQUIREMENT

Securing Hearing Officers

- ❖ *What process does your State have in place for securing impartial hearing officers?*
- ❖ *Is there an interagency agreement in place with procedural expectations clarified?*
- ❖ *How will the State Lead Agency monitor timelines and otherwise ensure IDEA compliance?*

Qualifications of Impartial Hearing Officers

- ❖ *How does your State ensure hearing officers are impartial and meet required qualifications?*

Standards of Practice

- ❖ *Do 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?*