

IDEA Early Intervention Due Process Complaints and Hearing Requests — Part B Procedures

*A Guide for Families of Infants and Toddlers
(Birth through Age 2)*



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This publication is part of a series of guides on dispute resolution options available under Part C of the IDEA.

These options include mediation, written state complaints, and due process complaints and hearings.

For more information on resolving early intervention disputes, visit the CADRE website:

www.cadreworks.org/resources/idea-early-intervention-family-guides

* This Guide describes the procedures for due process complaints for states that have adopted Part B procedures under Part C of the Individuals with Disabilities Education Act (IDEA). This Guide does not interpret, modify, or replace any procedural safeguards or requirements of federal or state law.

IMPORTANT THINGS TO KNOW BEFORE USING THIS GUIDE:

- ◆ Each Part C lead agency has the option of adopting either IDEA Part B or IDEA Part C procedures for due process complaints and hearings.
- ◆ This Guide covers due process complaints, resolution meetings, and due process hearings for lead agencies that have adopted IDEA Part B procedures.
- ◆ There are important differences between IDEA Part B and IDEA Part C procedures that affect timelines, time limits, and other requirements. To find out the requirements your state follows, contact your state early intervention lead agency or Office of Special Education Programs (OSEP) funded parent center.
- ◆ Resolution meetings are only available in states that have adopted IDEA Part B procedures.

If you live in a state that has adopted IDEA Part C procedures, see: *IDEA Early Intervention Due Process Complaints and Hearings - Part C Procedures: A Guide for Families of Infants and Toddlers (Birth through Age 2)*.

If you have questions about information in this Guide, contact your state lead agency or Office of Special Education (OSEP) funded parent center for assistance.

Commonly used terms and additional information is available at:

www.cadreworks.org/resources/idea-early-intervention-family-guides

DUE PROCESS COMPLAINTS AND HEARINGS AND YOUR RIGHTS UNDER THE IDEA

Parents have important legal rights if they disagree about whether the requirements of Part C of the IDEA are being followed. Under Part C of the IDEA you have the right to file a due process complaint when you want a hearing officer to make a decision about early intervention services for your child and family.

WHAT IS A DUE PROCESS COMPLAINT?

Due process complaints may also be referred to as “hearing requests.” State lead agencies must have written procedures for filing a request for a due process hearing. This written document is used to ask for a hearing related to the identification, evaluation, placement, or provision of early intervention services (EIS) to an infant or toddler with a disability and that infant’s or toddler’s family.

Under the Part B procedures, the due process complaint may be filed by a parent, an EIS provider, or the state lead agency. This starts a process that may lead to a formal hearing where a hearing officer decides the outcome. The lead agency is required to have procedures for conducting a resolution meeting with you to attempt to resolve your issues prior to conducting a formal hearing.

A few examples of when a due process complaint might be filed:

- ◆ You disagree with the results of your child’s evaluation regarding his or her eligibility for Part C.
- ◆ You think the Individualized Family Service Plan (IFSP) developed by your child’s IFSP team does not meet your child’s needs and the needs of your family.
- ◆ You believe the EIS provider is not providing the services included in your child’s IFSP.
- ◆ You disagree with the setting in which your child’s services are delivered.
- ◆ If your state’s system charges for EIS services and you disagree with the fee charged for services or the decision about your ability to pay.

HOW TO FILE A DUE PROCESS COMPLAINT:

Part C of the IDEA requires a due process complaint include at least the following information:

- ◆ The child's name and the address of the residency of the child;
- ◆ The name of the child's EIS provider;
- ◆ In the case of a child who is homeless, available contact information;
- ◆ A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- ◆ A proposed resolution of the problem to the extent known and available to the party at the time.

A due process complaint that does not have the required information may be returned or dismissed, which could delay resolution of the issues. Information on how to file a due process complaint is available from your state lead agency. Parents often seek help with this process, which may include working with their OSEP-funded parent center or an attorney.

The parent, EIS provider or state lead agency filing the due process complaint must send a copy to the other side at the same time it is filed with the state lead agency.

**State regulations associated with Part C
of the IDEA dispute resolution
processes may differ from state to state.**

**Parents and family members are
encouraged to contact their state lead
agency or OSEP-funded parent
center for more information.**

WHAT HAPPENS AFTER I FILE A DUE PROCESS COMPLAINT?

- ◆ Typically, the state lead agency or hearing officer will send a letter to you and the other side with information about your rights in the hearing and what you can expect to happen. This letter often includes:
 - ◊ The name and contact information of the hearing officer assigned to your case;
 - ◊ Due process timelines and important steps that happen in the process;
 - ◊ Information about the resolution meeting requirement and availability of mediation; and
 - ◊ Information about free or low-cost legal resources available in the area.
- ◆ The state lead agency or EIS provider must respond to the issues in your complaint within 10 *calendar* days. If the state lead agency or EIS provider filed the due process complaint, you will have 10 *calendar* days to respond to the issues listed in their due process complaint.
- ◆ The state lead agency must schedule a resolution meeting to occur within 15 *calendar* days of receiving your due process complaint.
- ◆ A resolution meeting does not have to be held if you and the other side agree in writing not to have one and to proceed to a due process hearing, or agree to use mediation instead. For more information, see: *IDEA Early Intervention Mediation: A Guide for Families of Infants and Toddlers (Birth through Age 2)*
- ◆ If the state lead agency does not schedule the resolution meeting on your due process complaint within the required time, you can ask the due process hearing officer to schedule the hearing. A resolution meeting is not required if the state lead agency or EIS provider filed the due process complaint.
- ◆ The hearing officer must mail a copy of the hearing decision to each side within a specific number of days from the end of the

hearing process. States have the option of adopting a 30 or 45 *calendar* day timeline. The timeline may be extended at the request of either party. In addition to having this information in the Procedural Safeguards given to you, your state lead agency or OSEP-funded parent center can tell you the timeline your state has adopted.

- ◆ Additional information about hearing officer qualifications and responsibilities can be found at: www.cadreworks.org/resources/idea-early-intervention-family-guides

FREQUENTLY ASKED QUESTIONS ABOUT DUE PROCESS COMPLAINTS

Is there a time limit for filing a due process complaint?

Unless an exception to the time limit applies, the problems you list in your due process complaint must have occurred no more than two years before you file your due process complaint, or from the date you should have known that the issue occurred. In some states, the time limit for filing may be less than two years, so it is important to file your due process complaint as soon as possible. An exception to these timelines may apply if you were prevented from filing the complaint due to a misrepresentation that the problem had been resolved or if you were not provided information about this process.

Is there a special form that I have to use?

No. Your state lead agency may offer a due process complaint form, but you do not have to use it. If a form is available, looking at it to see what information is requested may help you organize your thoughts before writing your due process complaint. If no form is available, contact your state lead agency or OSEP-funded parent center for assistance.

Will my child still receive services after I file a due process complaint?

From the time a due process complaint is filed until it is resolved, your child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that you consented to, unless you and the state lead agency agree otherwise. If your due process complaint involves an application for initial services under

Part C of IDEA, your child must receive the services that are not in dispute.

Do I need an attorney to file a due process complaint?

No. A parent is not required to have an attorney to file a due process complaint, although getting legal advice could be helpful. If you end up going to a due process hearing, the other side will usually have an attorney. Because of the complexity and legal nature of a due process hearing, you may want to have an attorney. Some parents decide whether to have an attorney after finding out if the other side will have one. The state lead agency must inform you of any free or low-cost legal and other relevant services. OSEP-funded parent centers may be able to help with attorney referrals, but generally do not offer legal advice.

What if I need an interpreter?

It is important that you are able to understand and fully participate in the due process proceedings. Let everyone involved know, in advance of meetings regarding your due process complaint, that you need an interpreter. Contact your service coordinator or state lead agency for more information.

WHAT IS A RESOLUTION MEETING?

A resolution meeting offers parents, EIS providers and lead agencies the opportunity to resolve issues before a due process hearing. You will have the chance to discuss the concerns you identified in your due process complaint, including ways to address those concerns. Working together to resolve disputes can prevent the need for a due process hearing, which can be expensive and may have a negative effect on relationships.

Participants include the parents, someone from the state lead agency who can make decisions on behalf of the lead agency, and IFSP team members who have specific knowledge about the facts listed in the due process complaint.

CONSIDERATIONS ABOUT RESOLUTION MEETINGS

- ◆ In a resolution meeting, the participants are the decision makers.
- ◆ The participants decide together which members of the IFSP team should attend the meeting.
- ◆ Parents may choose to bring an advocate, attorney, or other support person. The other side may only bring an attorney to the resolution meeting if the parents choose to bring an attorney.
- ◆ If you and the other side do not come to an agreement by the end of the resolution process, the due process complaint may move forward to a due process hearing.

Some states may provide facilitators for resolution meetings when requested by the parent and the other side. There is no requirement in Part C of the IDEA that facilitators be made available for resolution meetings.

If you believe assistance with communication might be helpful, and your state does not provide a facilitator for resolution meetings, you may want to suggest mediation instead of a resolution meeting. For more information, see: *IDEA Early Intervention Mediation: A Guide for Families of Infants and Toddlers (Birth through Age 2)*

TIPS TO PREPARE FOR YOUR RESOLUTION MEETING

- ◆ It is important to prepare in advance of the meeting to keep the meeting focused and make sure your concerns are addressed.
- ◆ Identify the issues as you see them, outline what you think your child and family need, and bring some ideas about possible solutions.
- ◆ Organize your documents and write dates and notes on them. Bring to the meeting any documentation and materials that support your viewpoint.
- ◆ Practice what you want to say at the resolution meeting with a family member, friend or advocate.
- ◆ Think of questions that the other side may ask and write down your possible answers.
- ◆ Have a plan to deal with emotions (yours and others) during the meeting. You may ask for a break to gather your thoughts at any time during the meeting.
- ◆ The meeting is more likely to result in an agreement if everyone listens carefully to one another and is respectful.

FREQUENTLY ASKED QUESTIONS ABOUT THE RESOLUTION PROCESS

What is the resolution process?

This is the 30 calendar day period that begins after the state lead agency receives a parent's due process complaint. It is during this time that a resolution meeting may take place. A resolution meeting offers an opportunity to resolve the parent's concerns before going to a due process hearing. There is no resolution meeting required if the EIS provider or state lead agency filed the due process complaint.

What if I can't make it to the resolution meeting at the scheduled time?

The state lead agency should make an effort to schedule the resolution meeting at a time when everyone involved in the meeting can attend. If the parent files the due process complaint, the resolution meeting must be scheduled within 15 *calendar* days. If you are unable to attend the meeting in person, the state lead agency may offer you the option of participating by video conference or conference call.

What if I don't want to participate in the resolution meeting?

Unless you and the other side have agreed in writing not to have a resolution meeting and to proceed to a due process hearing, or agreed to use mediation instead, it is very important for you to participate in the resolution meeting. If you don't participate in the resolution meeting, the other side can request that the hearing officer dismiss your due process complaint and cancel the hearing.

Are discussions at the resolution meeting confidential?

Part C of the IDEA does not address confidentiality in resolution meetings. If confidentiality is important to you and the other side, you may sign a confidentiality agreement or include it in your resolution agreement. Unlike mediation, resolution meetings do not require confidentiality. If information is shared in a resolution meeting, it may be used in a due process hearing. You cannot be required to sign a confidentiality agreement to participate in the resolution meeting.

How do I know that the EIS provider or state lead agency will follow through with the agreement?

Families and providers are more likely to follow agreements they develop together. Written resolution agreements that are signed by both sides can be enforced in court, and in some states, by the state lead agency.

What if I change my mind about the agreement after the meeting?

Either side may cancel a resolution agreement within three *business* days after the agreement is signed.

What if we don't reach an agreement during the resolution meeting?

The resolution process lasts for 30 *calendar* days. During that time discussions and meetings can continue allowing you and the other side more time to resolve the dispute.

What if we don't reach an agreement before the end of the 30 calendar day resolution process?

You could also try mediation, where the mediator will help with communication between you and the other side. If you and the other side do not come to an agreement within 30 *calendar* days after your due process complaint was filed, you may proceed to a due process hearing.

WHAT IS A DUE PROCESS HEARING?

A due process hearing is the most formal dispute resolution option available under Part C of the IDEA. It is conducted by a hearing officer who considers the information provided by each side, may ask questions of witnesses, and makes a decision about the dispute. The hearing officer is required to be impartial and knowledgeable about Part C of the IDEA.

CONSIDERATIONS ABOUT DUE PROCESS HEARINGS

- ◆ Most due process complaints are resolved without a hearing, often through the use of mediation or another early dispute resolution process.
- ◆ A due process hearing is the most formal, least collaborative dispute resolution option. Other dispute resolution options include mediation and written state complaints. Depending upon the situation, each choice has advantages and disadvantages. For ways of comparing your options, see: *Quick Guide to Early Intervention Dispute Resolution Processes for Families of Children (Birth through Age 2).*

- ◆ In a due process hearing, a hearing officer who doesn't know your child and family makes the decision. In mediation, which you may request at any time, the decision is made by you, the EIS provider, lead agency staff and others who know your child the best.
- ◆ The hearing officer is required to include both sides in any conversations about the due process complaint or hearing.
- ◆ Any due process hearing conducted under Part C of the IDEA must be carried out at a time and place that is reasonably convenient to you.
- ◆ The hearing officer's decision is legally binding. Either side can appeal the decision.

QUESTIONS ABOUT DUE PROCESS HEARINGS

When and where does the hearing occur?

The due process hearing should occur at a time and place that is reasonably convenient to the parents of the child involved. Hearings sometimes take place over several days. They often are held in public buildings with conference rooms, such as courthouses, town halls, and libraries.

Do I need an attorney if a due process hearing has been scheduled?

If you go to a due process hearing, the other side will usually have an attorney. Because of the complexity and legal nature of a due process hearing, you may want to have an attorney. While the IDEA does not require parents to have an attorney for a due process hearing, some parents decide whether to have an attorney after finding out if the other side will have one.

Can a hearing officer make adjustments to the timeline?

Yes. The hearing officer may grant an extension of the hearing timeline for a specific period of time at your request or the request of the other side.

Who is likely to attend the due process hearing?

Generally, parents, the EIS provider, state lead agency staff, attorneys, witnesses, and others whom they invite may attend the due process hearing.

What happens after the hearing?

The hearing officer considers all of the information provided during the hearing process and will issue findings and conclusions on the issues in the due process complaint. Your state may have adopted either a 30 or 45 calendar day timeline for issuing due process decisions. Once a hearing officer issues a decision, the state lead agency has the responsibility to make sure the hearing officer's decision is followed.

Can I appeal the hearing decision?

Yes. You or the other side may appeal a due process hearing decision. It is important to know exactly how much time you have to appeal. In many states, appeals must be filed in a short period of time. Any appeal must be made to an appropriate state or federal court, unless your state lead agency has a state review process. For information on appeals in your state, check with your lead agency or OSEP-funded parent center.

What if the EIS provider or state lead agency doesn't follow the hearing officer's decision?

If the EIS provider or state lead agency isn't following the hearing officer's decision, you may choose to file a written state complaint with the state lead agency, requesting that they enforce the decision. For more information see: www.cadreworks.org/resources/idea-early-intervention-family-guides

SOURCES OF IMPORTANT INFORMATION

A current list of all parent centers in the nation is available through the **Center for Parent Information and Resources** (CPIR):
<https://parentcenterhub.org/find-your-center> or call (973) 642-8100



The **Center for Appropriate Dispute Resolution in Special Education** (CADRE) is the national technical assistance center on dispute resolution:
<https://www.cadreworks.org> or call (541) 359-4210



A current list of Part C state coordinators is available through the **Early Childhood Technical Assistance Center** (ECTA):
<http://ectacenter.org/contact/ptccord.asp>



Information on the **Individuals with Disabilities Education Act** (IDEA) is available online:
<https://sites.ed.gov/idea>



YOUR LOCAL PARENT CENTER:

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