

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

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



September 2018

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 C 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 and due process hearings for lead agencies that have adopted IDEA Part C 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.

If you live in a state that has adopted IDEA Part B procedures, see: *IDEA Early Intervention Due Process Complaints and Hearings - Part B 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.cadeworks.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 C procedures, the due process complaint may only be filed by a parent. This starts a process that may lead to a formal hearing where a hearing officer decides the outcome.

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 placement or setting where 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.

It is important to include enough information in your due process complaint to identify your child, communicate your concern, and provide information about how you believe the problem could be resolved. 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.

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.
- ◆ Your service coordinator, lead agency or OSEP-funded parent center may be able to provide more information about the process, the timeline, and any free or low-cost legal resources available in your area.

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. Additional information about hearing officer qualifications and the responsibilities of a hearing officer 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?

Part C of the IDEA does not identify a time limit for filing. It is important to file in a timely manner to make sure your concerns about your child's services are addressed promptly. In addition to having this information in the Procedural Safeguards given to you, you may contact your service coordinator, the lead agency, or OSEP-funded parent center in your state for more information on timelines and procedures.

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 service coordinator, the lead agency, or OSEP-funded parent information 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 lead agency agree otherwise. If your due process complaint involves an application for initial services under Part C of IDEA, your child must continue to 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 also 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. 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.

FREQUENTLY ASKED QUESTIONS ABOUT DUE PROCESS HEARINGS

When and where does the hearing occur?

The due process hearing must 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 are often held in public buildings with conference rooms, such as courthouses, town halls, and libraries.

Can a hearing officer make adjustments to the 30-day timeline for issuing a decision?

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 staff, attorneys, witnesses, and others whom they invite may attend the due process hearing.

What happens with the hearing decision?

The state lead agency has the responsibility to ensure the hearing officer's decision is followed unless the decision is appealed.

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. For information on appeals in your state, check with your state lead agency or OSEP-funded parent center.

Do I have a right to a copy of the hearing record?

Yes. Parents have the right to a written or electronic transcript of the hearing and a written copy of the hearing decision at no cost.

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

If the EIS provider or 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: *IDEA Early Intervention Written State Complaints: A Guide for Families of Infants and Toddlers (Birth through Age 2)*.

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 must be carried out at a time and place that is reasonably convenient to you.
- ◆ Following a due process hearing, the hearing officer must mail a copy of the hearing decision to each side no later than 30 *calendar* days after the lead agency received the due process complaint. The hearing officer may extend the timeline at your request or the request of the other side.
- ◆ The hearing officer's decision is legally binding. Either side can appeal the decision.

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://www.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.cadeworks.org> or call (541) 359-4210

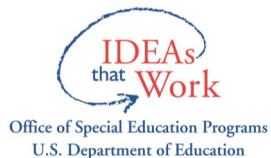


A current list of Part C state coordinators is available through the **Early Childhood Technical Assistance Center** (ECTA):

<http://ectacenter.org/contact/ptccoord.asp>



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



YOUR LOCAL PARENT CENTER:

CADRE produced this document under U.S. Department of Education, Office of Special Education Programs Cooperative Agreement No. H326X130001. Tina Diamond, Ph.D., served as the project officer. The views expressed herein do not necessarily represent the positions or policies of the Department of Education. No official endorsement by the U.S. Department of Education of any product, commodity, service, or enterprise mentioned in this publication is intended or should be inferred. This product is in the public domain. Authorization to reproduce it in whole or in part is granted. While permission to reprint this publication is not necessary, the citation should be: CADRE (2018). IDEA Early Intervention Due Process Complaints and Hearings - Part C Procedures, A Guide for Families of Infants and Toddlers (Birth through Age 2), Eugene, OR: CADRE.

