

Dispute Resolution Options

§303.430 State dispute resolution options.

(a) *General.* Each statewide system must include written procedures for the timely administrative resolution of complaints through mediation, State complaint procedures, and due process hearing procedures, described in paragraphs (b) through (e) of this section.

(b) *Mediation.* Each lead agency must make available to parties to disputes involving any matter under this part the opportunity for mediation that meets the requirements in §303.431.

(c) *State complaint procedures.* Each lead agency must adopt written State complaint procedures to resolve any State complaints filed by any party regarding any violation of this part that meet the requirements in §§303.432 through 303.434.

(d) *Due process hearing procedures.* Each lead agency must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in §303.421(a), by either adopting—

(1) The Part C due process hearing procedures under section 639 of the Act that—

(i) Meet the requirements in §§303.435 through 303.438; and

(ii) Provide a means of filing a due process complaint regarding any matter listed in §303.421(a); or

(2) The Part B due process hearing procedures under section 615 of the Act and §§303.440 through 303.449 (with either a 30-day or 45-day timeline for resolving due process complaints, as provided in §303.440(c)).

(e) *Status of a child during the pendency of a due process complaint.* (1) During the pendency of any proceeding involving a due process complaint under paragraph (d) of this section, unless the lead agency and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents.

(2) If the due process complaint under paragraph (d) of this section involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.

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(Authority: 20 U.S.C. 1415(e), 1415(f)(1)(A), 1415(f)(3)(A)-(D), 1439)

The regulations for each of these dispute resolution options are provided in the next pages of this handout.

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§303.431 Mediation.

(a) *General.* Each lead agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

(b) *Requirements.* The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process—

- (i) Is voluntary on the part of the parties;
- (ii) Is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part C of the Act; and
- (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2)(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.

(ii) The lead agency must select mediators on a random, rotational, or other impartial basis.

(3) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.

(4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(5) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—

(i) States that all discussions that occurred during the mediation process will remain confi-



dential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(ii) Is signed by both the parent and a representative of the lead agency who has the authority to bind such agency.

(6) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(7) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

(c) *Impartiality of mediator.* (1) An individual who serves as a mediator under this part—


(i) May not be an employee of the lead agency or an EIS provider that is involved in the provision of early intervention services or other services to the child; and

(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of a lead agency or an early intervention provider solely because he or she is paid by the agency or provider to serve as a mediator.

(d) *Meeting to encourage mediation.* A lead agency may establish procedures to offer to parents and EIS providers that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—

(1) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community

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parent resource center in the State established under section 671 or 672 of the Act; and

(2) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(Approved by Office of Management and Budget under control number 1820-NEW)

(Authority: 20 U.S.C. 1415(e), 1439(a)(8))

State Complaint Procedures

§303.432 Adoption of State complaint procedures.

(a) *General.* Each lead agency must adopt written procedures for—

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements in §303.434 by providing for the filing of a complaint with the lead agency; and

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy (P&A) agencies, and other appropriate entities, the State procedures under §§303.432 through 303.434.

(b) Remedies for denial of appropriate services. In resolving a complaint in which the lead agency has found a failure to provide appropriate services, the lead agency, pursuant to its general supervisory authority under Part C of the Act, must address—

(1) The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

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(Authority: 20 U.S.C. 1439(a)(1))

§303.433 Minimum State complaint procedures.

(a) *Time limit; minimum procedures.* Each lead agency must include in its complaint procedures a time limit of 60 days after a complaint is filed under §303.434 to—

(1) Carry out an independent on-site investigation, if the lead agency determines that an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Provide the lead agency, public agency, or EIS provider with an opportunity to respond to the complaint, including, at a minimum--

(i) At the discretion of the lead agency, a proposal to resolve the complaint; and

(ii) An opportunity for a parent who has filed a complaint and the lead agency, public agency, or EIS provider to voluntarily engage in mediation, consistent with §§303.430(b) and 303.431;

(4) Review all relevant information and make an independent determination as to whether the lead agency, public agency, or EIS provider is violating a requirement of Part C of the Act or of this part; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—



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- (i) Findings of fact and conclusions; and
 - (ii) The reasons for the lead agency's final decision.
- (b) *Time extension; final decision; implementation.* The lead agency's procedures described in paragraph (a) of this section also must—
- (1) Permit an extension of the time limit under paragraph (a) of this section only if—
 - (i) Exceptional circumstances exist with respect to a particular complaint; or
 - (ii) The parent (or individual or organization, if mediation is available to the individual or organization under State procedures) and the lead agency, public agency or EIS provider involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section; and
 - (2) Include procedures for effective implementation of the lead agency's final decision, if needed, including—
 - (i) Technical assistance activities;
 - (ii) Negotiations; and
 - (iii) Corrective actions to achieve compliance.
- (c) *Complaints filed under this section and due process hearings under §303.430(d).* (1) If a written complaint is received that is also the subject of a due process hearing under §303.430(d), or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.
- (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—


- (i) The due process hearing decision is binding on that issue; and
 - (ii) The lead agency must inform the complainant to that effect.
- (3) A complaint alleging a lead agency, public agency, or EIS provider's failure to implement a due process hearing decision must be resolved by the lead agency.

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(Authority: 20 U.S.C. 1439(a)(1))

§303.434 Filing a complaint.

- (a) An organization or individual may file a signed written complaint under the procedures described in §§303.432 and 303.433.
- (b) The complaint must include—
 - (1) A statement that the lead agency, public agency, or EIS provider has violated a requirement of Part C of the Act;
 - (2) The facts on which the statement is based;
 - (3) The signature and contact information for the complainant; and
 - (4) If alleging violations with respect to a specific child—
 - (i) The name and address of the residence of the child;
 - (ii) The name of the EIS provider serving the child;
 - (iii) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

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(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §303.432.

(d) The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the lead agency.

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(Authority: 20 U.S.C. 1439(a)(1))

States that Choose to Adopt the Part C Due Process Hearing Procedures under Section 639 of the Act

§303.435 Appointment of an impartial due process hearing officer.

(a) *Qualifications and duties.* Whenever a due process complaint is received under §303.430(d), a due process hearing officer must be appointed to implement the complaint resolution process in this subpart. The person must—

(1) Have knowledge about the provisions of this part and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and

(2) Perform the following duties:

(i)(A) Listen to the presentation of relevant viewpoints about the due process complaint.

(B) Examine all information relevant to the issues.

(C) Seek to reach a timely resolution of the due process complaint.

(ii) Provide a record of the proceedings, including a written decision.

(b) *Definition of impartial.* (1) *Impartial* means that the due process hearing officer appointed to implement the due process hearing under this part—

(i) Is not an employee of the lead agency or an EIS provider involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this part.

(Authority: 20 U.S.C. 1439(a)(1))



§303.436 Parental rights in due process hearing proceedings.

(a) *General.* Each lead agency must ensure that the parents of a child referred to Part C are afforded the rights in paragraph (b) of this section in the due process hearing carried out under §303.430(d).

(b) *Rights.* Any parent involved in a due process hearing has the right to—

(1) 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;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing;

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(4) Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and

(5) Receive a written copy of the findings of fact and decisions at no cost to the parent.

(Authority: 20 U.S.C. 1439(a))

§303.437 Convenience of hearings and timelines.

(a) Any due process hearing conducted under this subpart must be carried out at a time and place that is reasonably convenient to the parents.

(b) Each lead agency must ensure that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required under this subpart is completed and a written decision mailed to each of the parties.

(c) A hearing officer may grant specific extensions of time beyond the period set out in paragraph (b) of this section at the request of either party.

(Authority: 20 U.S.C. 1439(a)(1))

§303.438 Civil action.

Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.

(Authority: 20 U.S.C. 1439(a)(1))

States that Choose to Adopt the Part B Due Process Hearing Procedures under Section 615 of the Act

§303.440 Filing a due process complaint.

(a) *General.* (1) A parent, EIS provider, or a lead agency may file a due process complaint on any of the matters described in §303.421(a), relating to the identification, evaluation, or placement of a child, or the provision of early intervention services to the infant or toddler with a disability and his or her family under Part C of the Act.

(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or EIS provider knew, or should have known, about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §303.443(f) apply to the timeline in this section.

(b) *Information for parents.* The lead agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—


(1) The parent requests the information; or

(2) The parent or EIS provider files a due process complaint under this section.

(c) *Timeline for Resolution.* The lead agency may adopt a 30- or 45-day timeline, subject to §303.447(a), for the resolution of due process complaints and must specify in its written policies and procedures under §303.123 and in its prior written notice under §303.421, the specific timeline it has adopted.

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(Authority: 20 U.S.C. 1415(b)(6), 1439)

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§303.441 Due process complaint.

(a) *General.* (1) The lead agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(2) The party filing a due process complaint must forward a copy of the due process complaint to the lead agency.

(b) *Content of complaint.* The due process complaint required in paragraph (a)(1) of this section must include—

- (1) The name of the child;
- (2) The address of the residence of the child;
- (3) The name of the EIS provider serving the child;
- (4) In the case of a homeless child (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the EIS provider serving the child;
- (5) 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
- (6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) *Notice required before a hearing on a due process complaint.* A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) *Sufficiency of complaint.* (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the



due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.

(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements in paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process complaint only if—

(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §303.442; or

(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(4) If a party files an amended due process complaint, the timelines for the resolution meeting in §303.442(a) and the time period to resolve in §303.442(b) begin again with the filing of the amended due process complaint.

(e) *Lead agency response to a due process complaint.* (1) If the lead agency has not sent a prior written notice under §303.421 to the parent regarding the subject matter contained in the parent's due process complaint, the lead agency or EIS provider must, within 10 days of receiving the due process complaint, send to the parent a response that includes—

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(i) An explanation of why the lead agency or EIS provider proposed or refused to take the action raised in the due process complaint;

(ii) A description of other options that the IFSP Team considered and the reasons why those options were rejected;

(iii) 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

(iv) A description of the other factors that are relevant to the agency's or EIS provider's proposed or refused action.

(2) A response by the lead agency under paragraph (e)(1) of this section does not preclude the lead agency from asserting that the parent's due process complaint was insufficient, where appropriate.

(f) *Other party response to a due process complaint.* Except as provided in paragraph (e) of this section, the party receiving a due process complaint 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.

(Authority: 20 U.S.C. 1415(b)(7),
1415(c)(2), 1439)

§303.442 Resolution process.

(a) *Resolution meeting.* (1) 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 that—

(i) Includes a representative of the lead agency who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the lead agency unless the parent is accompanied by an attorney.

(2) The purpose of the resolution meeting 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.

(3) The meeting described in paragraphs (a)(1) and (a)(2) of this section need not be held if—

(i) The parent and lead agency agree in writing to waive the meeting; or

(ii) The parent and lead agency agree to use the mediation process described in §303.431.

(4) The parent and the lead agency must determine the relevant members of the IFSP Team to attend the meeting.

(b) *Resolution period.* (1) If the lead agency has not resolved the due process complaint to the satisfaction of the parties within 30 days of the receipt of the due process complaint, the due process hearing may occur.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §303.447 begins at the expiration of the 30-day period in paragraph (b)(1) of this section.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (b)(2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.



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(4) 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.

(5) If the lead agency fails to hold the resolution meeting specified in paragraph (a) of this section 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.

(c) **Adjustments to 30-day resolution period.** The 30- or 45-day timeline adopted by the lead agency under §303.440(c) for the due process hearing described in §303.447(a) starts the day after one of the following events:

(1) Both parties agree in writing to waive the resolution meeting.

(2) 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.

(3) 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.

(d) **Written settlement agreement.** If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (a)(2) of this section, the parties must execute a legally binding agreement that is—

(1) Signed by both the parent and a representative of the lead agency who has the authority to bind the agency; and

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the lead agency, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements pursuant to this section.

(e) **Agreement review period.** If the parties execute an agreement pursuant to paragraph (d) of this section, a party may void the agreement within three business days of the agreement’s execution.

(Authority: 20 U.S.C. 1415(f)(1)(B), 1439)



§303.443 Impartial due process hearing.



(a) **General.** Whenever a due process complaint is received consistent with §303.440, the parents or the EIS provider involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§303.440 through 303.442.

(b) **Agency responsible for conducting the due process hearing.** The hearing described in paragraph (a) of this section must be conducted by the lead agency directly responsible for the early intervention services of the infant or toddler, as determined under State statute, State regulation, or a written policy of the lead agency.

(c) **Impartial hearing officer.** (1) At a minimum, a hearing officer—

(i) Must not be—

(A) An employee of the lead agency or the EIS provider that is involved in the early intervention services or care of the infant or toddler; or

(B) A person having a personal or professional interest that conflicts with the person’s objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

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(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(3) Each lead agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(d) **Subject matter of due process hearings.** 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 §303.441(b), unless the other party agrees otherwise.

(e) **Timeline for requesting a hearing.** A parent, lead agency, or EIS provider must request an impartial hearing on their due process complaint within two years of the date the parent, lead agency, or EIS provider knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

(f) **Exceptions to the timeline.** The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to—

(1) Specific misrepresentations by the lead agency or EIS provider that it had resolved the problem forming the basis of the due process complaint; or

(2) The lead agency's or EIS provider's failure to provide the parent information that was required under this part to be provided to the parent.

(Approved by Office of Management and Budget under control number 1820-NEW)

(Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)-(D), 1439)



§303.444 Hearing rights.

(a) **General.** Any party to a hearing conducted pursuant to §§303.440 through 303.445, or an appeal conducted pursuant to §303.446, has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of infants or toddlers with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(4) Obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written or, at the option of the parents, electronic findings of fact and decisions.

(b) **Additional disclosure of information.** (1) At least five business days prior to a hearing conducted pursuant to §303.443(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

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(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) *Parental rights at hearings.* Parents involved in hearings must—

(1) Be given the right to open the hearing to the public; and

(2) Receive a copy of the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section at no cost.

(Authority: 20 U.S.C. 1415(f)(2), 1415(h), 1439)

§303.445 Hearing decisions.

(a) *Decision of hearing officer.*

(1) Subject to paragraph (a)(2) of this section, 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 Act, must be based on substantive grounds.

(2) 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 Act only if the procedural inadequacies—

(i) Impeded the child’s right to identification, evaluation, and placement or provision of early intervention services for the child and that child’s family under Part C of the Act;

(ii) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding identification, evaluation, placement or provision of early intervention services for the child and that child’s family under Part C of the Act; or

(iii) Caused a deprivation of educational or developmental benefit.

(3) Nothing in paragraph (a) of this section precludes a hearing officer from ordering the lead agency or EIS provider to comply with procedural requirements under §§303.400 through 303.449.

(b) *Construction clause.* Nothing in §§303.440 through 303.445 affects the right of a parent to file an appeal of the due process hearing decision with the lead agency under §303.446(b), if the lead agency level appeal is available.

(c) *Separate due process complaint.* Nothing in §§303.440 through 303.449 precludes a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) *Findings and decisions to general public.* The lead agency, after deleting any personally identifiable information, must make the findings and decisions available to the public.

(Authority: 20 U.S.C. 1415(f)(3)(E)-(F), 1415(h)(4), 1415(o), 1439)



§303.446 Finality of decision; appeal; impartial review.

(a) *Finality of hearing decision.* A decision made in a hearing conducted pursuant to §§303.440 through 303.445 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §303.448.

(b) *Appeal of decisions; impartial review.* (1) The lead agency may provide for procedures to allow any party aggrieved by the findings and decision in the hearing to appeal to the lead agency.

(2) If there is an appeal, the lead agency must conduct an impartial review of the findings and decision appealed. The official conducting the review must—

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- (i) Examine the entire hearing record;
- (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;
- (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §303.444 apply;
- (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
- (v) Make an independent decision on completion of the review; and
- (vi) Give a copy of the written or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) **Findings of fact and decision to the general public.** The lead agency, after deleting any personally identifiable information, must make the findings of fact and decisions described in paragraph (b)(2)(vi) of this section available to the general public.

(d) **Finality of review decision.** The decision made by the reviewing official is final unless a party brings a civil action under §303.448.

(Authority: 20 U.S.C. 1415(g), 1415(h)(4), 1415(i)(1)(A), 1415(i)(2), 1439)

§303.447 Timelines and convenience of hearings and reviews.



(a) The lead agency must ensure that not later than either 30 days or 45 days (consistent with the lead agency's written policies and procedures adopted under §303.440(c)) after the expiration of the 30-day period in §303.442(b), or the adjusted 30-day time periods described in §303.442(c)—

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The lead agency must ensure that not later than 30 days after the receipt of a request for a review—

(1) A final decision is reached in the review; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1), 1439)

§303.448 Civil action.

(a) *General.* Any party aggrieved by the findings and decision made under §§303.440 through 303.445 who does not have the right to an appeal under §303.446(b), and any party aggrieved by the findings and decision under §303.446(b), has the right to bring a civil action with respect to the due process complaint under §303.440. The 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.

(b) *Time limitation.* The party bringing the action has 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 Act, in the time allowed by that State law.

(c) *Additional requirements.* In any action brought under paragraph (a) of this section, the court—

(1) Receives the records of the administrative proceedings;



(2) Hears additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) *Jurisdiction of district courts.* The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(e) *Rule of construction.* Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§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 Act.

(Authority: 20 U.S.C. 1415(i)(2), 1415(i)(3)(A), 1415(l), 1439)

