

Commonly Asked Questions

General:

Can the Part C Office offer parents any kind of help in filing a complaint?

The Part C Office can assist parents by helping them put their verbal complaints into writing, linking them with other language interpreters as requested, and informing them of individuals and organizations who provide free or low-cost legal assistance.

What Happens to My Child If I File a Request for Dispute Resolution?

During the time that a complaint is being resolved, the child and family must continue to receive the appropriate Part C early intervention services currently being provided, unless the family and the participating agency/provider otherwise agree. If the family/provider disagreement involves adding a new service, then the child and family must continue to receive those services that are not in dispute. (34 CFR 303.425(a) and (b)).

If the disagreement involves initial eligibility to receive Part C early intervention services, the child and family do not receive services under Part C until the eligibility question is resolved.

What are the Costs for Dispute Resolution?

Administrative Complaint: There is no cost to either the family or the local early intervention system.

Mediation: The Part C Office bears the full cost of the mediation process required under the IDEIA, including the costs of other meetings such as meetings to discuss the benefits of the mediation process and the fee charged by the mediator.

Due Process Hearing: Costs are shared equally by the Local Lead Agency and the Part C Office. The shared costs include:

- Expenses of the hearing officer (i.e., time, travel, secretarial, postal and telephone expenses),
- Expenses incurred by order of the hearing officer (i.e., independent educational evaluations, deposition or transcript), and
- Expenses for making a record of a hearing (i.e., hearing tapes).
- The Part C Office is not liable to the Local Lead Agency for expenses incurred for witnesses (except where the hearing officer subpoenas witnesses on his own initiative) or for attorney's fees.
- Part C funds **may not be used** to pay attorney's fees associated with due process actions under Part C (in accordance with a 1991 OSEP letter to Alabama).

Administrative Complaints

Can a parent (or other complainant) decide to withdraw their complaint after filing it with the Part C Office? If so, what steps are taken?

Yes. A complainant may withdraw their complaint after it has been filed with the Part C Office. In order to do so, the parent (or other complainant) calls or writes to the Part C Office to request that the complaint be withdrawn. If the complaint was being handled through the administrative complaint process, both the parent and any agency/provider named in the complaint will receive a "Withdrawal of Complaint" form to review and sign to indicate the complaint has been withdrawn. Once this form has been received by the

Part C office, a letter is sent to all parties acknowledging receipt of the request to withdrawal the complaint and that it has been done. Parent are informed, however, that they may re-initiate the complaint or initiate any other complaint should they feel that a procedural violation has occurred.

Can a parent file an administrative complaint if he or she has also submitted a request for a due process hearing?

Yes. But the State must set aside any part of an administrative complaint that is being addressed in the due process hearing until the conclusion of the due process hearing. If the administrative complaint includes any issue(s) that is not part of the due process request, then those issues not being addressed through due process must be handled within the 60-calendar-day timeline required through the administrative complaint procedures. (34 CRR 303.512(c)(1))

What happens if an issue is raised in an administrative complaint that has previously been decided in a due process hearing involving the same parties?

The due process hearing decision is binding and the Part C Office must inform the complainant of that fact. (34 CFR 303.512(c)(2))

Mediation

What are the benefits of mediation?

Given its voluntary nature and the ability of parties to devise their own remedies, mediation often results in written agreements where parties have an increased commitment to, and ownership of, the agreement. Some parties report mediation as enabling them to have more control over the process and decision-making, thus serving as an important tool of self-empowerment. Additionally, remedies are often individually tailored and contain workable solutions, easier for the parties to implement as both parties have been involved in the specific details of the implementation plan

May someone who works in Part C who is trained as a mediator, mediate a dispute in a locality other than the one they work in?

No. While there is nothing in IDEIA regulations that precludes parents and Local Lead Agency's from attempting to resolve disputes through an informal process, the use of current Part C employees as mediators is not permissible for the mediation required under IDEA 34 CFR § 300.506. In addition, individuals who serve as a mediator may not be employees of any LEA or any State agency that receives a subgrant for any fiscal year under Part B of the IDEA. An individual who serves as a mediator may not:

- Be an employee of a LICC that is providing direct services to a child who is the subject of the mediation process;
- Be an employee of any state agency that receives funds under Part C of IDEA
- Have no personal or professional conflict of interest.

(34 CFR §§ 300.194, and 300.506(c)(1)(i)(A).)

By contrast, due process hearing officers may be employees of a State agency or LEA that is not involved in the education or care of the child. 34 CFR § 300.508.

This difference between the requirements for due process hearing officers and mediators as well as the requirement that mediators have specialized expertise in laws and regulations relating to the provision of special education and related services were included to try and make mediation a more attractive option for parents and an effective option for both parties.

Can discussions that happen during mediation later be used as evidence at a due process hearing or any subsequent civil proceedings?

No. Discussions that occur during the mediation process must be kept confidential and may not be used as evidence in a later due process hearing or any subsequent civil proceedings. (34 CFR 303.419)

Can An Administrative Complaint Be Filed if A Request For Mediation Has Been Filed?

Yes. Any issues in the complaint that are being addressed in Mediation must be set aside until after the Mediation Meeting is held or Mediation Agreement is signed. Other issues not part of the Mediation request are handled within the 60-calendar day timeline

Due Process

What Happens If Someone Had A Complaint That the Due Process Hearing Decision Was Not Properly Being Implemented?

The individual would be instructed and encouraged to file an Administrative Complaint with the Part C Office

(34 CFR 303.512.©(3))

Since the Lead Agency may not alter or interfere with a decision rendered by a due process hearing officer, how are situations handled when a subsequent complaint is filed with the Lead Agency on similar issues?

The Lead Agency may resolve an issue(s) raised in an administrative complaint by informing the complainant in writing that the specific issue(s) has been decided in a due process hearing. If an issue(s) raised in the administrative complaint is similar to, but not the same as, the specific issue resolved in a due process hearing, the Lead Agency may not claim that the issue has been resolved in the hearing and must proceed to resolve the issue through its administrative complaint procedures. (34 CFR 303.512(c)) [Please note that this question and its answer are taken from a July 17, 2000 Memorandum from the Office of Special Education Programs (OSEP) to Part C Lead Agencies.]

If a hearing officer rules on an issue(s) raised by the parent in a due process hearing, is there any time in which a subsequent complaint on the same issue may be filed?

Section 303.512(c)(2) requires that if a hearing officer has already ruled on an issue at a due process hearing, the decision is final and binding. The lead agency must inform the complainant that the hearing decision is binding. The lead agency must use its State complaint resolution procedures to resolve any issue(s) in the complaint that was not resolved in the hearing. In determining that it will not resolve an issue in a complaint because that issue was previously resolved in a due process hearing, the lead agency must ensure that the legal and factual issues are indeed identical. Also, any complaint alleging an entity's failure to implement the due process decision is to be resolved by the lead agency. (§303.512(c)(3)). [Please note that this question and its answer are taken from a July 17, 2000 Memorandum from the Office of Special Education Programs (OSEP) to Part C Lead Agencies.]