



# Compliance vs. Complaint.... You Decide

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Creating Connections: Navigating Toward  
Success

2006 Early Intervention Conference

Roanoke, Virginia

April 25, 2006

# Purpose of Presentation

## ■ Provide:

- Overview of three formal dispute resolution mechanisms
- “Tips” for both providers and families
- Generic documentation “tips”

## ■ Answer questions



# Word of Caution

- Information presented today:
  - NOT intended
    - as legal advise
    - as an interpretation of the laws and regulations governing IDEIA, Part C in Virginia
  - IS intended
    - to help with the understanding of the implementation of these laws and regulations.
  - WILL NOT cover any specific information about any dispute resolution cases that have been handled by the Part C Office.



# Disagreements

- Everyone disagrees at one point or another
- Generally worked out through discussion and negotiation.
- Prior to contacting the Part C Office for assistance:
  - Localities are required to try to resolve disagreements at the local level using:
    - Informal decision-making
    - Conflict Resolution mechanisms
  - Contact the **Family Involvement Project**



**We tried working it out..... But we  
can't. What else is there?**

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**Administrative Complaint  
Mediation (alone or simultaneous with  
due process hearing), or  
Due Process Hearing**



# Administrative Complaints

## ■ Definition:

- Procedure-related disagreement
  - Alleges a violation of Part C requirements
  - May allege a violation concerning an individual child or the child's family
  - May be directed against a policy, pattern or practice that is alleged to be a violation of federal or state law or guideline.
- The complaint cannot address personnel issues.



# Administrative Complaints (cont.)


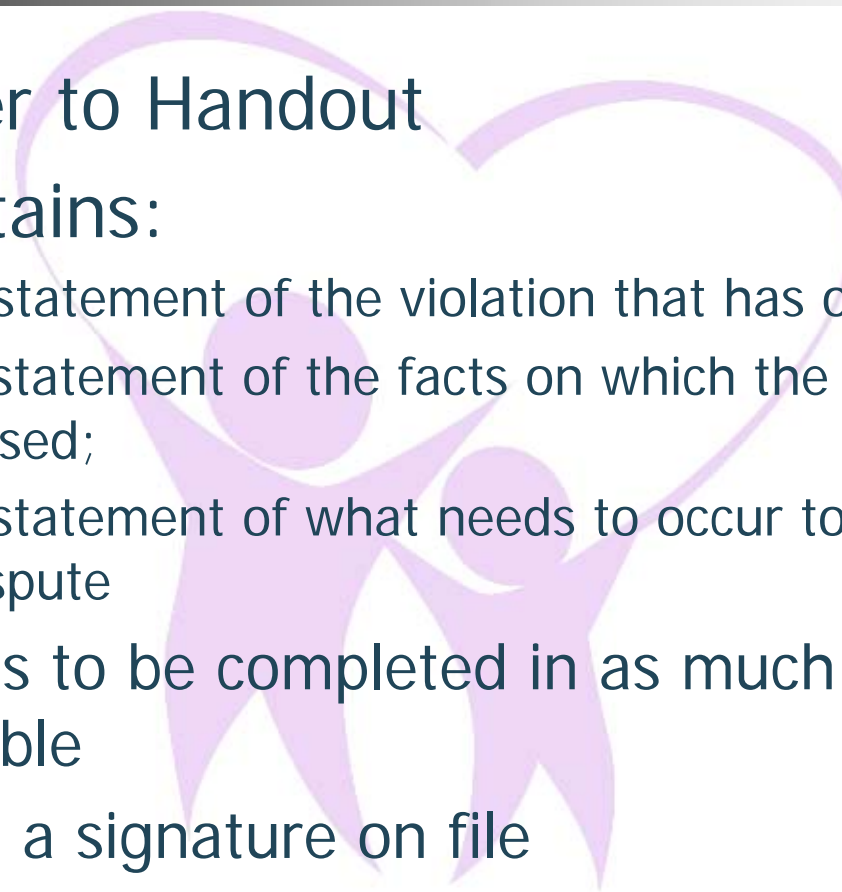
- Who can file an administrative complaint?
  - Individual (including parent or organization)
- Is there a time limit?
  - Complaints will be investigated:
    - One (1) year following to the date the complaint is received by the Part C Office
      - unless a longer period is reasonable because the alleged violation continues for the child;
    - Three (3) years following to the date complaint is received by the Part C Office
      - if there is a request for reimbursement.

# Examples of Administrative Complaints

- Examples of Administrative Complaints:
  - The local Part C early intervention system is not providing a service listed on the IFSP;
  - The initial IFSP is not developed within 45 calendar days of referral; or
  - The local Part C early intervention system denies a parent's request to review his/her child's early intervention records



# Receipt of a “Request for Dispute Resolution”

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- 
- Refer to Handout
  - Contains:
    - A statement of the violation that has occurred;
    - A statement of the facts on which the complaint is based;
    - A statement of what needs to occur to resolve the dispute
  - Needs to be completed in as much detail as possible
  - Need a signature on file



# Request Comes In, What Happens Next?

- Part C Office:
  - Receives the “Request for Dispute Resolution”;
  - Assigns it a number and logs it in the Dispute Resolution Log Book (AC#\_\_);
  - Acknowledges receipt of the “Request for Dispute Resolution” to all parties;
    - Provides additional opportunity for informal resolution;
  - Determines with locality, need for an interpreter;
  - Investigates the alleged violations;
  - Documents findings in a “Findings Report”;
  - Follows-Up with the “Findings Report”



# Acknowledgement of Receipt of the “Request for Dispute Resolution”

## ■ **The Part C Office sends a letter**

- To all parties involved in the complaint
- Outlines the nature of the complaint
- Provides parties 10 calendar days to try to resolve the issue(s) through informal mechanisms
- Outlines process that will occur should the issue(s) not be resolved within the 10 calendar days
- Indicates the deadline when the Administrative Complaint must be resolved (60 calendar days from receipt of complaint at the Part C Office)



# The Investigation

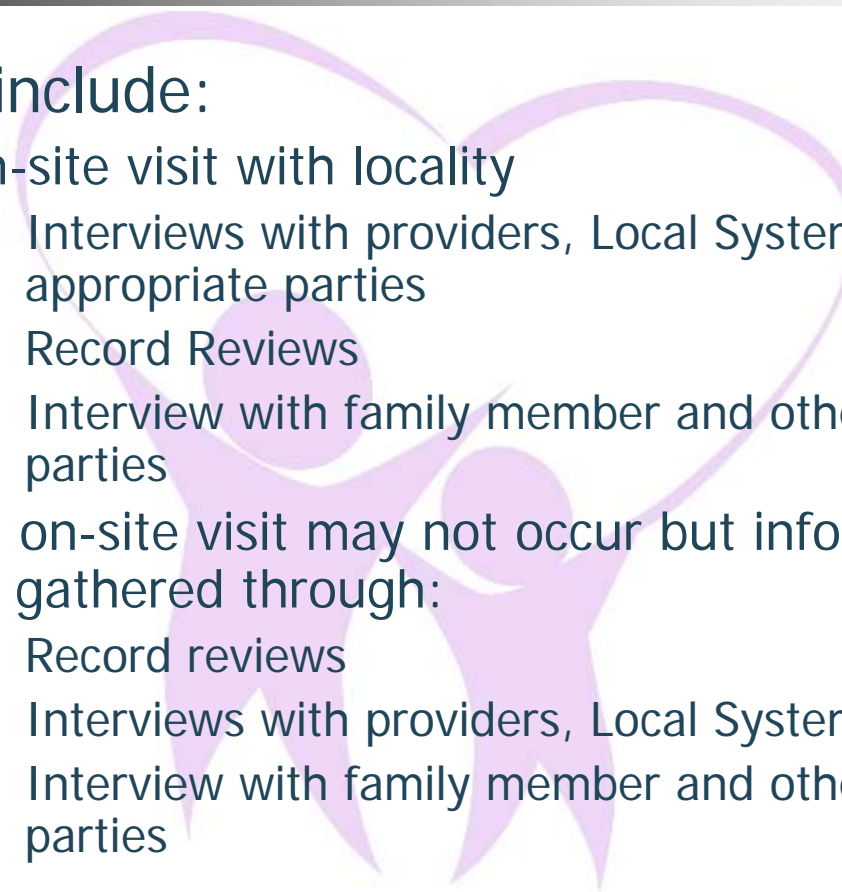
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- The Part C Office investigation:
  - “Fact finding” ;
  - Gathering relevant information and documentation via phone calls and/or record reviews;
  - Having the complainant submit additional information to support the alleged violation either orally or in writing.
  - Determining which laws, regulations and procedures that govern regulations are violated;



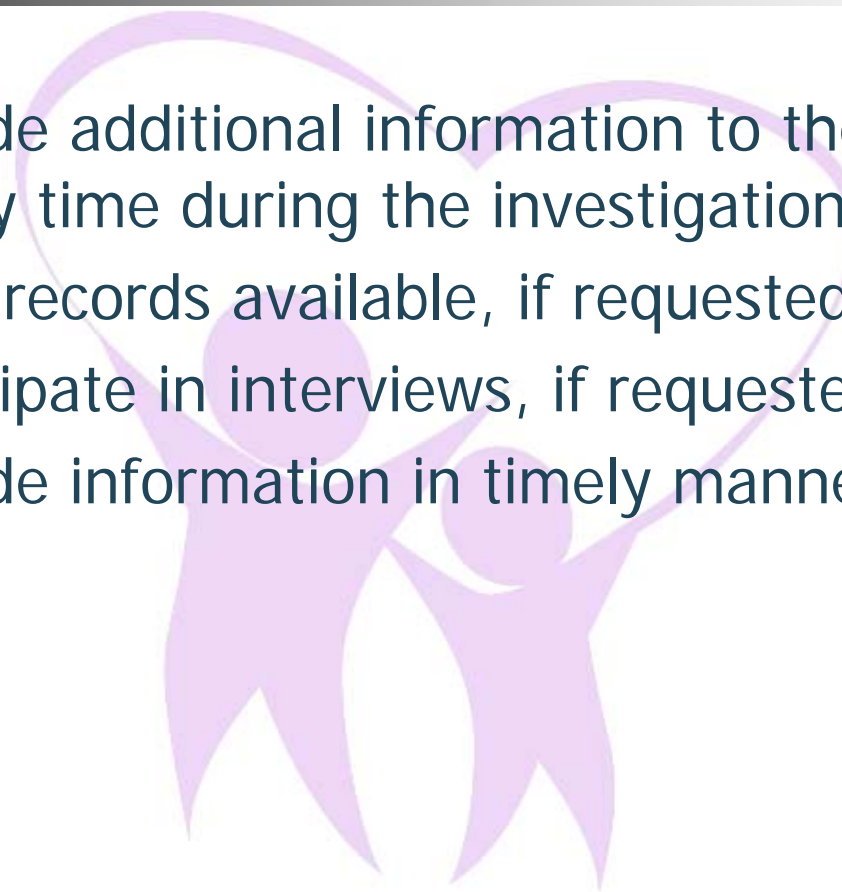
# The Investigation

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- May include:
    - On-site visit with locality
      - Interviews with providers, Local System Managers, Other appropriate parties
      - Record Reviews
      - Interview with family member and other appropriate parties
    - An on-site visit may not occur but information will still be gathered through:
      - Record reviews
      - Interviews with providers, Local System Manager
      - Interview with family member and other appropriate parties
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# Role of the Family and Provider During An Administrative Complaint

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- Provide additional information to the Part C office at any time during the investigation, if appropriate
  - Have records available, if requested
  - Participate in interviews, if requested
  - Provide information in timely manner



# Findings Report

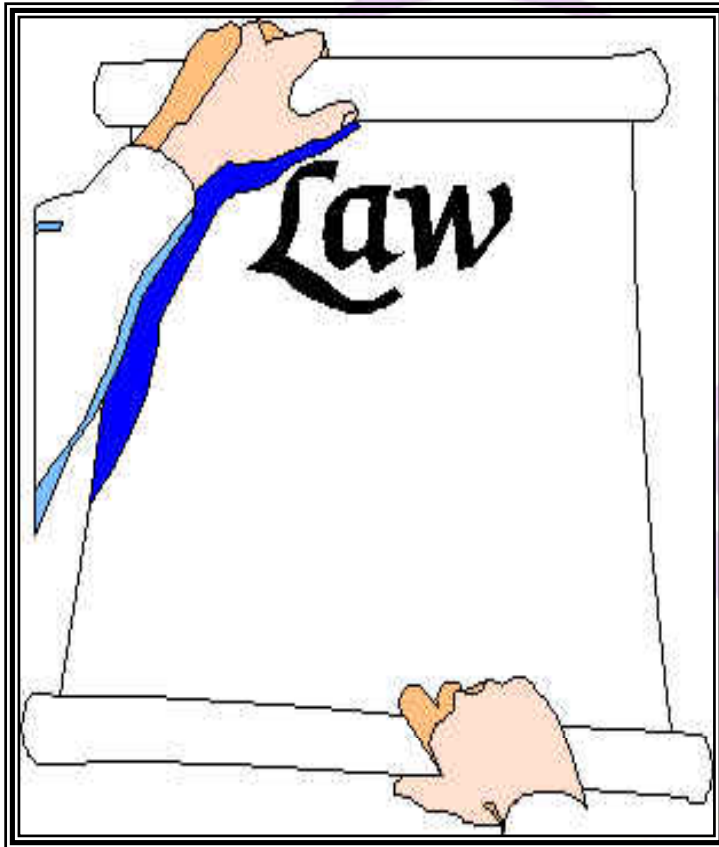
- A written decision based on facts and applicable law.
  - Binding document that:
    - Outlines each alleged violation;
    - States the findings of facts related to the violations;
    - States the conclusion reached;
      - “Founded” or “Unfounded”
    - Outlines the reasons for the final decision;
    - Outlines the procedures for implementation of the final decision.
      - Technical Assistance
      - Negotiations
      - Corrective Action Plans



# What Happens After An Administrative Complaint?

- Locality implements the actions outlined within the “Findings Report”
  - May include, but not limited to:
    - Development of Corrective Action Plan(s) to remediate the violation
    - Technical Assistance and/or training
    - Compensatory services to family
    - Quarterly record and/or utilization reviews
    - Reimbursement to insurance companies
    - Required training to providers to enhance knowledge of Part C supports and services
- Part C Office reviews the implementation of the “Findings Report” as part of its general supervision and monitoring





***Tips For All  
Parties  
Involved in An  
Administrative  
Complaint***



# Tips For All Parties Involved In A Complaint

- Speak with appropriate parties as soon as issues arise
  - Don't wait until you feel things are "out of control"
- Try to resolve issues through informal mechanisms
  - Work together to come to an understanding of mutual concerns and an agreements that is in the best interest of the child
  - Contact TA for assistance with resolution if appropriate
- Gather/organize the information needed to address the issues/questions that arise or support your position
- Review these documents:
  - [Notice of Child and Family Rights in the Infant & Toddler Connection of Virginia Part C Early Intervention System](#)
  - [Strengthening Partnerships: A Guide to Family Rights in the Infant & Toddler Connection of Virginia Part C Early Intervention System](#)
  - 34 CFR Part 303, Early Intervention Program for Infants and Toddlers with Disabilities (Part C of the Individuals with Disabilities Education Act) 303.510-512

# More Tips For All Parties Involved In A Complaint

## ■ Provide information to the Part C Office promptly

- Helps ensure that federal and state laws and regulations requiring a determination about the Administrative Complaint be made in 60 calendar days are met.

## ■ Have documentation organized

- All information related to the child available for review

## Document all conversations and meetings

- Ensure that the documentation reflects the content of the discussions, decisions, and action steps (if appropriate).
- Be sure the documentation is dated and signed.



# Individual Child Complaints

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Mediation (alone or simultaneous with  
due process hearing), or  
Due Process Hearing



# Individual Child Complaints

- Involves a parent-provider disagreement related to:
  - identification, evaluation, placement of the child or
  - provision of services to the child and family.
- A parent files an individual child complaint.
- Examples of individual child complaints include, but are not limited to, the following:
  - The parent disagrees with the evaluation team's determination that the child is not eligible under Part C.
  - The parent believes physical therapy is needed, but the rest of the IFSP team believes the child's IFSP outcomes can be met without physical therapy.



# What is Mediation?

- Voluntary, confidential, informal meeting
  - Facilitated by an individual trained in IDEIA, Part B, Part C. Also certified by the Supreme Court of Virginia—mediator
    - Encourages parties to identify and clarify areas of agreement and disagreement
    - Helps them to generate and evaluate options for resolution that will be mutually agreeable in a process.
      - DOES NOT make decisions for parties,
      - Supports thinking and search for solutions
  - The solutions will be put into writing (Mediation Agreement) and signed by both parties



# Request Comes In, What Happens Next?



## Part C Office:

- Follows similar procedures as in the Administrative Complaint.
  - Assigning a Number
  - Contacting family about the availability of Due Process
  - Acknowledging receipt of Request for Mediation, etc.
- Appoints Mediator
  - 5 calendar days of receipt of request for Mediation





# Appointment of a Mediator

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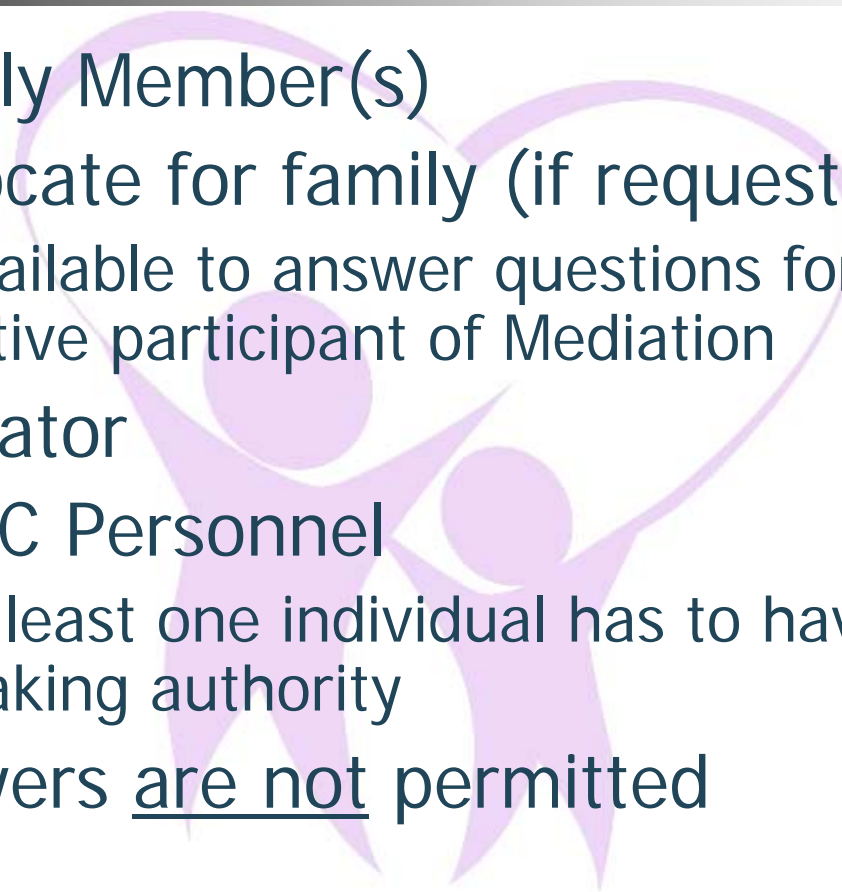
- Part C Office provides Mediator:
  - Copy of all information related to the request for Mediation
  - Information related to IDEIA, Virginia Policies and Procedures, OSEP Policy Letters that relate to the request for mediation
- Offer of Technical Assistance related to IDEIA and Virginia Policies and Procedures





# Participants in Mediation

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- Family Member(s)
  - Advocate for family (if requested by family)
    - Available to answer questions for family; not an active participant of Mediation
  - Mediator
  - Part C Personnel
    - At least one individual has to have decision making authority
  - Lawyers are not permitted

# Role of Part C Office in Mediation

## ■ Technical Assistance to:

- Mediator: IDEIA, Virginia's Policies and Procedures related to alleged violations
- Families: Understanding the Mediation Process
- Localities: Understanding the Mediation Process

## ■ Monitoring of:

- Implementation of the Mediation Agreement
- Technical Assistance can not be provided on the issue(s) being mediated
- The Part C Office **does not** participate in the mediation process or the development of the Mediation Agreement



# Role of the Mediator

- Contacts all parties to discuss, at a minimum:
  - Mediation process, including the non-adversarial nature of the process;
  - Voluntary nature of mediation
    - Allows for either party to withdraw from mediation
    - Mediation cannot be used to deny or delay parent's rights to Due Process Hearing or other rights under Part C
  - Parent's rights to request an impartial hearing
    - at any time during the process
    - or if an agreement can not be reached
  - Parent's right to file an Administrative Complaint at any time
  - Date, location and time for mediation conference
  - Need for interpreter, translator or alternate mode of communication

# Role of the Family and Provider During Mediation

- Listen with an open mind
  - Gain a complete understanding of the issue(s)
  - Often solutions are presented that are amenable to all parties
- Work in partnership with each other for the best interest of the child
  - Agreement reached should reflect best ideas/solutions that are practical and reasonable
  - Agreement reached build on existing child and family strengths and interests and assist the family in achieving outcomes that make a meaningful difference in the life of their child and family.

# Mediation Conference: What Happens During It?

- Conference is:
  - Individual and geared toward the needs of parties involved
- The following outlines a general process
  - Introduction
    - Confidentiality Agreement
    - Ground Rules
  - Fact Finding
  - Clarifying
  - Generating Solutions
  - Results of Mediation
    - Full Agreement
    - Partial Agreement
    - Non Agreement

# Mediation Conference: What Happens After?

- No agreement reached:
  - Parents informed in writing right to a hearing by Lead Agency.
- Participants evaluate mediation process and mediator
- Mediator mails a copy of the Agreement/Partial Agreement or letter certifying that no agreement was reached to the Part C Office
- Information filed with initial request for mediation
- Technical Assistance provided to the locality to ensure the Mediation Agreement is implemented.
- Oversight of implementation of the Mediation Agreement –
  - Part C office --statewide monitoring/supervision procedures





## No Losers in Mediation



*Tips For All  
Parties  
Involved In  
Mediation*

# Tips For All Parties Involved In Mediation

- Separate the people and the issues
  - “bottom line”: what is best for the child
  - Do not personalize statements made by other side
- Clear your schedule.
  - Don't know how long mediation will last; do not want to be interrupted
- Documents are not necessary
- Listen carefully to the other side
  - Often give clues about how to solve the problem

- Review these documents:
  - Notice of Child and Family Rights in the Infant & Toddler Connection of Virginia Part C Early Intervention System
  - Strengthening Partnerships: A Guide to Family Rights in the Infant & Toddler Connection of Virginia Part C Early Intervention System
  - 3 CFR Part 303, Early Intervention Program for Infants and Toddlers with Disabilities (Part C of the Individuals with Disabilities Education Act) 303.510-512



# More Tips For All Parties Involved In Mediation

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- 
- Identify issues/concerns and facts that apply to them
    - List several solutions you feel may resolve the issue
    - Consider ALL possible solutions
    - Create options for mutual gain
    - Avoid becoming committed to a single option
  - Keep interests (feeling/concern) separate from positions (point of view/attitude)
  - Be specific about what you want as a result of mediation
    - “I want...” MUST be followed by “because”
    - “Because” well stated issues and supported factual evidence
  - Measure proposed agreement against best/worst alternatives
    - Understand the costs of each



# What is Due Process?

- Formal proceeding, resembles a trial
  - Differences are heard in front of a qualified impartial hearing officer
  - Witnesses, evidence and arguments to support positions presented
  - Hearing Officer's role:
    - Make a reasonable decision based on the information presented from both the family and provider
    - The decision is final and binding

# Request Comes In, What Happens Next?



## Part C Office:

- Follows similar procedures as in the Administrative Complaint.
  - Assigning a Number
  - Contacting family about the availability of Due Process
  - Acknowledging receipt of Request for Due Process, etc.
- Contacts Supreme Court of Virginia for Appointment of a Due Process Hearing Officer
  - 5 calendar days of receipt of request for Due Process
- Hearing conducted within 30 calendar days from receipt of request for Due Process



# Availability of Mediation

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- Families have the right to request mediation to occur simultaneously with a due process hearing.
  - If requested:
    - Mediation occurs prior to the Due Process Hearing (15 calendar days)
    - If resolved during Mediation, Due Process Hearing will be withdrawn
    - Mediation can not extend the timeline for completing Due Process Hearing (30 calendar days)

# Request Comes In, What Happens Next?

## The Part C Office:

- Contacts the Supreme Court of Virginia
  - On rotational basis, a Hearing Officer is assigned.
- Provides Due Process Hearing Officer:
  - Copy of all information related to the request for Due Process
  - Information related to IDEIA, Virginia Policies and Procedures, OSEP Policy Letters that relate to the request for Due Process
  - Offer of Technical Assistance related to IDEIA and Virginia Policies and Procedures and/or OSEP Policy Letters
  - Information about request for mediation if appropriate
- Arranges for Mediator, if appropriate
- Provides families with information of any free or low cost legal services



# Hearing Officers



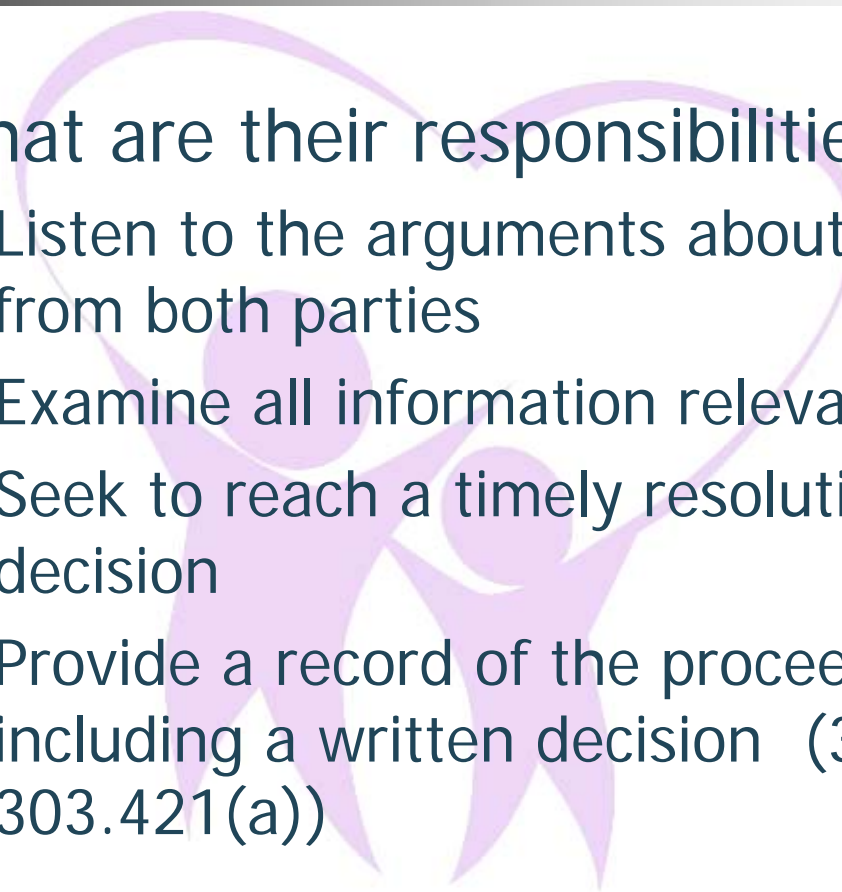
## Who are they?

- Not employees of any agency/entity involved in the provision of early intervention services
- No one with a personal or professional interest that would conflict with objectivity in implementing the process
- A person who qualifies to be a Hearing Officers but is not an employee of an agency solely because the person is paid by the agency to implement the disagreement resolution process (34CFR 303.431(b))



# Hearing Officers

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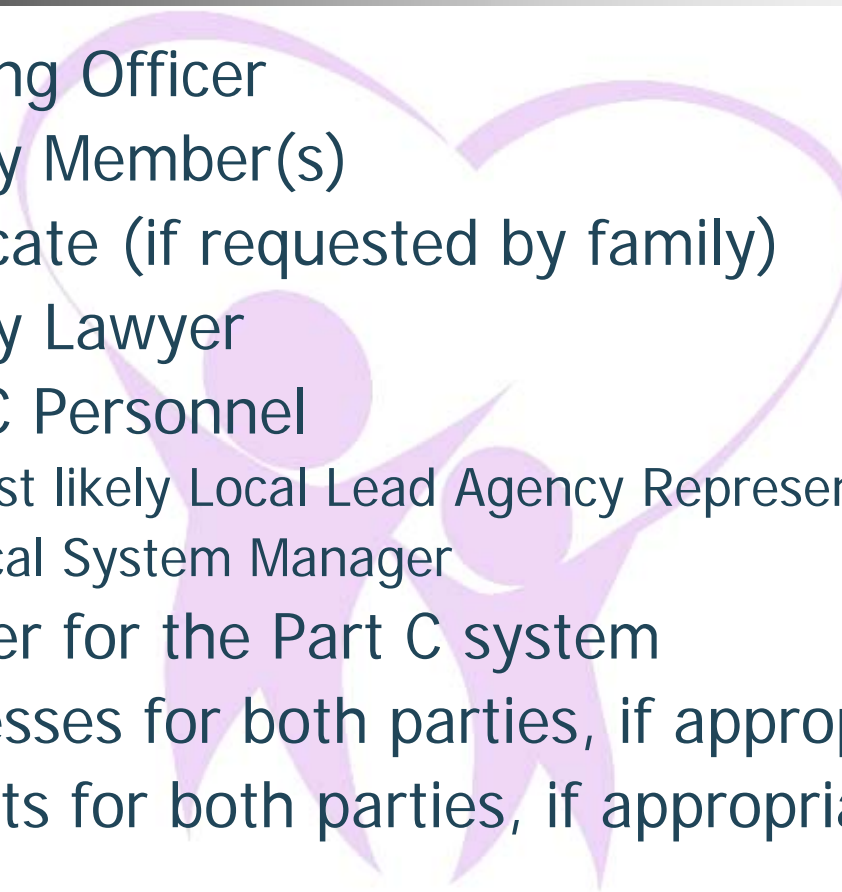
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- What are their responsibilities?
    - Listen to the arguments about the complaints from both parties
    - Examine all information relevant to the issues
    - Seek to reach a timely resolution of the decision
    - Provide a record of the proceedings, including a written decision (34 CFR 303.421(a))





# Participants in Due Process Hearing

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- 
- Hearing Officer
  - Family Member(s)
  - Advocate (if requested by family)
  - Family Lawyer
  - Part C Personnel
    - Most likely Local Lead Agency Representative
    - Local System Manager
  - Lawyer for the Part C system
  - Witnesses for both parties, if appropriate
  - Experts for both parties, if appropriate



# Family Rights

## Due Process Hearing

### Family Rights include:

- *Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services*
- *Present evidence and confront, cross-examine, and to compel the attendance of witnesses;*
- *Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding; and*
- *Obtain a written or electronic verbatim transcription of the proceeding; and*
- *Obtain written findings of fact and decisions*

(34 CFR 303.422)



# Local System

- The Local Early Intervention System is able to:
  - Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services
  - Present evidence and confront, cross-examine;
  - Obtain written findings of fact and decisions



# Role of Part C Office

## ■ Technical Assistance to:

- Due Process Hearing Officer: IDEIA, Virginia's Policies and Procedures, OSEP Policy Letters related to alleged violations
- Mediator: IDEIA, Virginia's Policies and Procedures, OSEP Policy Letters related to alleged violations
- Families: Understanding the Due Process/Mediation Process
- Localities: Understanding the Due Process/Mediation Process

## ■ Monitoring of:

- Implementation of the Due Process Ruling and/or Mediation Agreement
- Technical Assistance can not be provided on the issue(s) being heard in the Due Process
- The Part C Office **does not** participate in either the Due Process Hearing



***Tips For All  
Parties  
Involved in A  
Due Process  
Hearing***

# Tips For All Parties Involved In A Due Process Hearing

## ■ Review these documents:

- Notice of Child and Family Rights in the Infant & Toddler Connection of Virginia Part C Early Intervention System
- Strengthening Partnerships: A Guide to Family Rights in the Infant & Toddler Connection of Virginia Part C Early Intervention System
- 34 CFR Part 303, Early Intervention Program for Infants and Toddlers with Disabilities (Part C of the Individuals with Disabilities Education Act) 303.510-512

## ■ Keep the issues simple

## ■ Decisions are made regarding current and future service related issues

- Past information may be important but
- Need to show what is not working currently

## ■ Keep to the “main points”

- Don't clutter with weak arguments
- Present evidence only on the central issues of the case

# More Tips For All Parties Involved In A Due Process Hearing

- 
- 
- Prepare documentation in logical, sequential order
    - Chronological better than categorical, with most recent on top
    - IFSP in dispute should be first “exhibit”
  - Omit irrelevant and/or borderline evidence
    - Old, out-of date documents and duplicate information
  - Witnesses: credible
  - Other than “expert” witnesses, who will testify?
  - Collect all evidence prior to hearing
    - Ensure it is complete and current
  - Watch hearing officer closely
    - Via questions, statements provides guidance on what considered relevant, leanings
  - Try to settle before the hearing
    - No such thing as a guaranteed victory



# Documentation, Why the hubbub?

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**If it isn't documented  
it didn't happen!**



# Importance of Documentation in Dispute Resolution

## **CRITICAL**

- Documentation is:
  - Means of communication with providers and family
  - Blueprint for Service Coordination
  - Chronology of child and family's participation in Part C
  - Billing Documents
  - Monitoring Document

## **Legal Documents**

- Used in any form of Dispute Resolution
- Can be subpoenaed as part of other legal investigations


# Importance of Documentation in Dispute Resolution

- Things to Consider: (this is not an exhaustive list)
  - Include child's name on note
  - Date of note
  - Type/Method of Contact
    - Phone Call, Voice Message, E-mail, Face-Face, etc
  - Description of what Occurred
  - Signature and Title

# Importance of Documentation in Dispute Resolution

- **Documentation:** (this is not an exhaustive list)
  - Record events in factual, non-judgmental way
  - Avoid subjective statements
  - Use positive statements
  - Complete in timely manner
  - Write legibly!!

# Pitfalls To Avoid In Documentation

- 
- Record lacks documentation of phone calls with families
    - Cancellations, No Shows
    - Attempts to call families, actual conversations
  - Use of “white-out” to correct mistakes
    - Draw a single line through error, date, initial and continue with documentation
  - Use of brightly colored ink
    - Be consistent with one color (blue, black)
    - Black copies best

# Pitfalls To Avoid In Documentation

- “Sketchy” information about what occurred during any contact with provider, family (phone call, visit, etc)
  - Contain essential information for reader to know what occurred, progress, actions, plans, etc.
- Lacks link to Outcomes
  - Address outcomes listed on IFSP; not what “feels good today”
- Release of Information
  - Ensure current before sending out to provider/agency

# Pitfalls To Avoid In Documentation

- Inconsistent/Inaccurate information in IFSP
  - Child's Name and DOB is the SAME on all pages of the document
  - Auditory Verbal Therapy/ABA are NOT Part C Services-methodology.
    - Speech/Language Pathology, Audiology or Special Instruction
- Lack of documentation of reasons services are not provided in NE;
  - Transition plan back to NE
- Inconsistent completion of Transition Page
  - Transition planning occurs at all IFSP review meetings
- Lack of Service Coordination Outcomes
- Exceeding IFSP Review Timelines
  - At least 6 months; 365 days from initial IFSP

# Pitfalls To Avoid In Documentation

## ■ Procedural Safeguard Forms

- Complete Correctly

  - 5-day box

  - Reason action being proposed on *Parental Prior Notice* form

  - Date of referral on the *Notice and Consent for Initial Evaluation* matches the date in the child's record





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# Questions

Also  
See Handouts



# Request for Additional Information

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- For more information contact:

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.gov

