

Quick Guide to IDEA/Part C Dispute Resolution

Processes	Mediation	Written State Complaint	Due Process Complaint/ Hearing Request
How the Processes Differ	A voluntary process that brings people together with an impartial, qualified, and trained mediator, who helps them communicate with each other, express concerns, and resolve disagreements.	A written document used to communicate that an early intervention service provider, the state lead agency, or other public agency has not followed the IDEA, and to request a resolution by the state.	A process used to resolve a complaint filed by a parent.
What Issues & When Used	Available anytime there is a disagreement between parents and educators about special education and/or related services. It can be requested any time, including prior to, or when a due process hearing request or a written state complaint has been filed.	Available when there is a question about whether the IDEA regulations have been followed with respect to a particular infant/toddler and family or infants/toddlers and families system-wide	Used to resolve disagreements relating to the identification, evaluation, or placement of an infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that child's family.
Who Initiates	A family member, EIS provider, lead agency and/or public agency may request mediation, but participation must be voluntary for all parties.	Any person or organization, even one from another state, may file a written state complaint.	A parent may file a due complaint/hearing request.
Outcome/Desired Result	A signed, legally enforceable, written agreement.	A written decision that includes findings and conclusions, and lists reasons for the final decision. If there is a finding that the IDEA was not followed, the report must also include corrective actions required to address the needs of the infant/toddler and family related to the complaint.	Written findings of fact and decisions. The decision may order specific actions to be taken.
Process Distinctions	<p>Mediation discussions are confidential and not admissible in a due process hearing or civil lawsuit.</p> <p>Mediation is a flexible process – participants may influence the process and ultimately determine the outcome.</p> <p>The mediator does not make decisions. All participants must agree to any decision in a mediated agreement.</p>	<p>This is the only dispute resolution option open to any person or organization, including those unrelated to the child.</p> <p>The final decision may include corrective actions that are child-specific or relate to system-wide issues.</p> <p>The complainant will have the opportunity to provide additional information about the concerns. This information can be provided orally or in writing.</p>	<p>The parents have the right to obtain a written or electronic verbatim transcript of the hearing, at no cost to the parents.</p> <p>The hearing officer's decision is appealable in state or federal court.</p>

Quick Guide to IDEA/Part C Dispute Resolution

Processes	Mediation	Written State Complaint	Due Process Complaint/ Hearing Request
Benefits	<p>Discussions are confidential – what is said in mediation cannot be used as evidence in a due process hearing or civil lawsuit.</p> <p>Mediation offers a more flexible, less adversarial alternative to written state complaints or due process hearings.</p> <p>Sometimes participants work with the mediator to design the process. In some cases, participants may be allowed to select the mediator together.</p> <p>Mediation may help resolve disagreements more quickly than written state complaints or due process hearings.</p>	<p>A written decision must be issued no later than 60 <u>calendar</u> days after the complaint was received, unless the timeline is extended due to exceptional circumstances with regard to that particular complaint.</p> <p>A written state complaint is relatively easy to file.</p>	<p>Provides an opportunity to have an impartial third party decide the issues that the parties cannot resolve themselves.</p> <p>From the date that the due process complaint is filed until the decision is final, unless the lead agency and the parents agree otherwise, 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.</p> <p>If the due process complaint involves an application for initial services under Part C, the child must receive the services that are not in dispute.</p> <p>Unless appealed, the hearing officer’s decision is legally binding on the lead agency and the parents.</p>
Considerations	<p>Mediation is voluntary, so the family member, EIS provider, lead agency and/or public agency must agree to participate.</p> <p>Whether there is resolution of the issues, or an agreement is created, depends upon the participants.</p> <p>Complex situations may require multiple mediation sessions to come to agreement.</p> <p>There is no guarantee that a written agreement will be created.</p>	<p>The person or organization filing the complaint must provide facts to support the concern that the IDEA was not followed. A written state complaint must be signed.</p> <p>NOTE: Parent permission is needed to release personally identifiable information to a third-party.</p> <p>This process does not require those involved to try resolving the dispute collaboratively. However, mediation remains available anytime.</p> <p>The IDEA does not require states to offer an appeal process for the written decision. If an appeal is allowed, the 60-calendar day timeline for a final decision is still in effect.</p>	<p>The decision is made by a hearing officer who:</p> <ul style="list-style-type: none"> -Is not an employee of the lead agency or an early intervention service provider involved in the provision of early intervention services or care of the child; -Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process. <p>If the hearing officer’s decision is appealed, that decision may not be carried out until the appeal is done.</p> <p>The lead agency may be represented by an attorney. If the parent hires an attorney, it is at the parent’s expense.</p>

Quick Guide to IDEA/Part C Dispute Resolution

Processes	Mediation	Written State Complaint	Due Process Complaint/ Hearing Request
		<i>Check with your state lead agency for options that may be available.</i>	
Decision-Maker	Participants, including the infant/toddler’s parent, work on solutions together and are in control of the outcome	The state is responsible for ensuring that the complaint is resolved, and an independent decision is made about the complaint.	A hearing officer makes the hearing decision. If the decision is appealed, a state or federal judge makes the decision.
Role of 3rd Party	<p>A <u>mediator</u> typically:</p> <p>Helps participants develop ground rules for the session.</p> <p>Creates a safe environment and encourages participants to be respectful of other points of view.</p> <p>Guides discussion by listening, identifying interests, and clarifying concerns.</p> <p>Does not make decisions.</p> <p>Is knowledgeable of laws relating to special education and related services.</p>	<p>A <u>complaint investigator</u>:</p> <p>Reviews information related to the complaint.</p> <p>May interview or meet with people related to the complaint.</p> <p>Makes findings and a determination based on applicable law.</p> <p>Must be familiar with special education law and regulations.</p>	<p>The <u>hearing officer</u>:</p> <p>Oversees the hearing timeline, including all pre-hearing activities.</p> <p>Conducts the hearing and manages procedural matters.</p> <p>Uses applicable law to write a decision based on testimony and other evidence introduced in the hearing.</p> <p>May dismiss the due process complaint (hearing request) if the issues are resolved before the hearing.</p> <p>Must be familiar with special education law and regulations.</p>
Time Frame	<p>No timeline specified. Required to be scheduled in a timely manner.</p> <p>Mediation may not be used to deny or delay a family’s right to a due process hearing, or to deny any other rights under Part C of the IDEA.</p>	<p>Under the IDEA, written state complaints must be filed within one year of the date when the individual knew or should have known of the problem.</p> <p>The written decision must be issued no later than 60 <u>calendar</u> days from the date the complaint was filed, unless the timeline is extended under exceptional circumstances or if the parties agree to extend the timeline to engage in the mediation process.</p>	<p>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.</p> <p>The hearing must be completed, and the hearing decision issued, within 30 <u>calendar</u> days from the date the due process complaint was received.</p>

Quick Guide to IDEA/Part C Dispute Resolution

Processes	Mediation	Written State Complaint	Due Process Complaint/ Hearing Request
Financial Responsibility	No cost to the family. The mediator and facilities are provided at public expense.	No cost to the family. The investigation is conducted, and decision provided at public expense.	The hearing, hearing officer, facilities, and decision must be at no cost to the parents. Each party pays its own costs, which may include attorney's fees and witness fees.
Impact on Relationships	A mediator may help participants problem-solve more effectively. Better communication and improved relationships often result from mediations.	This process does not focus on relationships.	Due process is considered the most adversarial dispute resolution process.
How to Prepare	Gather documentation of the facts	<p>The person filing the complaint must:</p> <ul style="list-style-type: none"> -Include all of the required information to support the claim that the IDEA was not followed when the complaint is filed. -At the same time the complaint is filed with the State, the complainant must provide a copy of the complaint to the EIS provider, state lead agency or entity the complaint is against. -Respond to all requests for more information about the complaint in a timely manner. <p>It may helpful to organize all of the child's records and other documents and be prepared to demonstrate how this information shows that the agency did not follow the requirements.</p>	<p>Considerable preparation is needed to present a case adequately. Parties should be prepared to do the following for a hearing:</p> <ul style="list-style-type: none"> -Gather and submit evidence -Prepare testimony, witness lists, and other hearing documents -Question and cross-examine witnesses <p>Parties choose whether or not to hire or consult with an attorney. A person who is not represented by an attorney may be referred to as appearing "<i>pro se</i>." This is a Latin term that means the person represents himself or herself in the legal proceeding.</p>