

Dispute Resolution: Formal Complaints, Mediation, and Due Process Hearings

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Who is responsible: IDEA/Part C State Office

Introduction

As lead agency for the state's early intervention system under Part C of the Individuals with Disabilities Education Act (IDEA/Part C), the South Carolina Department of Health and Human Services (SCDHHS) is responsible for implementation of procedural safeguards consistent with all applicable federal and state laws and regulations. These procedural safeguards apply to all families referred or receiving IDEA/Part C services and are the responsibility each Intake Coordinator, Service Coordinator and Early Intervention Service Provider (EIS Provider). See IDEA/Part C Procedures for Family Rights and Safeguards for additional information. In the event of a violation of a procedural safeguard or other requirements under IDEA/Part C, disputes may be addressed through complaints, mediation agreements, or due process hearings.

Definitions

Definitions used in these procedures for dispute resolution can be found in Appendix A.

Dispute Resolution

Under IDEA/Part C, dispute resolution may take place in the following ways:

- Formal, written complaints
- Mediation sessions
- Due process hearings

SCDHHS will contract with individuals to investigate and report on complaints, serve as mediators, and serve as due process hearing officers. Under the State Performance Plan (SPP), all types of dispute resolution are publicly reported in the Annual Performance Report (APR) to the U.S. Department of Education.

Options for Dispute Resolution

Procedures for Formal Written Complaints:

SCDHHS is responsible for ensuring investigation and resolution of any complaint, including those filed by parents, an organization, or individual from another state, that meets requirements for filing a formal written complaint. Rights, safeguards, and pathways to resolution, including procedures for filing a complaint, are disseminated to parents, Parent Training and Information Centers, Protection and Advocacy agencies, other appropriate entities and interested individuals.

Filing a Formal Complaint:

A formal, written complaint must include all the following to be considered for investigation:

- A statement that the IDEA/Part C system, a public agency, or an EIS provider has violated a requirement of Part C of the Act.
- The facts on which the statement is based.
- The signature and contact information for the person or entity filing the complaint.
- If alleging violations of federal statute or regulations with respect to a specific child, the complaint must include all the following:

- o The name and address of the residence of the child.
- o The name of the EIS provider(s) serving the child if the complaint is about services.
- o A description of the nature of the problem of the child, including facts relating to the problem.
- o A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- The alleged violation must have occurred less than one year prior to the date that the complaint is received.
- 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 SCDHHS.

Complaint Investigation Procedures:

A complaint must be resolved within 60 calendar days after filing. IDEA/Part C State Office must ensure the contracted investigator has enough information about the complaint to:

- Carry out an independent on-site investigation if it is determined that an investigation is necessary.
- Give the individual or entity filing the complaint the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
- Provide the IDEA/Part C system, public agency, or EIS provider with an opportunity to respond to the complaint, including, at a minimum:
 - o A proposal to resolve the complaint; and
 - o An opportunity to voluntarily engage in mediation between the individual or entity filing the complaint and the IDEA/Part C system, public agency, or EIS provider.
- Review all relevant information and make an independent determination as to whether the IDEA/Part C system, public agency, or EIS provider is violating a requirement under IDEA/Part C.
- Issue a written decision to the parent, individual or entity filing the complaint that addresses each allegation in the complaint and contains:
 - o Findings of fact and conclusions; and
 - o The reasons for SCDHHS' final decision.
- SCDHHS may permit an extension of the time limit only if exceptional circumstances exist with respect to a complaint; or the parent, individual or entity filing the complaint and the IDEA/Part C system, public agency, or EIS provider involved agree to extend the time to engage in mediation.
- The resolution must include procedures for effective implementation of SCDHHS' final decision, if needed, including:
 - o Technical assistance activities.
 - o Negotiations.
 - o Findings of non-compliance and corrective actions to achieve compliance.
- If in resolving a complaint SCDHHS finds there has been a failure to provide appropriate services, under its general supervisory authority the IDEA/Part C system must address:
 - o The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and
 - o Appropriate future provision of services for all infants and toddlers with disabilities and their families.
- If a written complaint is also the subject of a due process hearing or contains multiple issues of which one or more are part of the hearing, SCDHHS will 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 above.
- If an issue raised in a complaint filed has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue and SCDHHS must inform the complainant to that effect. If the complaint alleges the IDEA/Part C system, a public agency, or an EIS provider failed to implement a due process hearing decision, the complaint must be resolved by SCDHHS' contracted complaint investigators.

Mediation Agreement Procedures:

Formal mediation agreements are an option available for resolution of disputes, including formal written complaints and/or due process hearing requests.

Conditions when mediation may be used:

- Mediation may only be *requested* by parents of children referred to or eligible for IDEA/Part C
- Mediation may be *offered* by the subject of a complaint as a pathway to resolution, but the parent is not obligated to accept mediation under these conditions.

Mediation must be:

- Voluntary on the part of the parties.
- Not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under IDEA/Part C.
- Conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

SCDHHS will maintain a list of contractors who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.

- Mediators must be selected on a random rotational, or other impartial basis. An individual who serves as a mediator:
 - Will not be an employee of SCDHHS, the IDEA/Part C system or an EIS provider that is involved in the provision of early intervention services or other services to the child, and
 - Cannot have a personal or professional interest that conflicts with the person's objectivity.
- The IDEA/Part C system will bear the cost of the mediation process, including the costs of meetings.
- 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.
- 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:
 - States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
 - Is signed by both the parent and a representative of the IDEA/Part C system who has the authority to bind such agency.
- A written, signed mediation agreement is enforceable in any State court of the United States.
- 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.

Due Process Hearings:

A due process hearing may be requested by the parent when:

- The parent has requested amendment of the early intervention record, and the request is refused; or
- As a method of resolution of a formal, written complaint.

When a due process hearing request is received, SCDHHS will contract with a qualified, impartial due process hearing officer to implement the due process hearing proceedings.

The due process hearing officer will:

- Have knowledge about the provisions of IDEA/Part C and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and
- Perform the following duties:
 - Listen to the presentation of relevant viewpoints about the due process complaint.
 - Examine all information relevant to the issues.
 - Seek to reach a timely resolution of the due process complaint.
 - Provide a record of the proceedings, including a written decision.

Parental Rights in Due Process Hearing Proceedings:

Any parent involved in a due process hearing has the right to:

- 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.
- Present evidence, confront, cross-examine, and compel the attendance of witnesses.
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing.
- Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent.
- Receive a written copy of the findings of fact and decisions at no cost to the parent.

Convenience of Hearings and Timelines:

- Any due process hearing conducted must be carried out at a time and place that is reasonably convenient to the parents.
- IDEA/Part C must ensure that, no later than 30 days after the receipt of a parent's due process complaint, the due process hearing is completed, and a written decision mailed to each of the parties.
- The hearing officer may grant specific extensions of time beyond the period at the request of either party.

Civil Action:

Any party who believes they have been found wrongly at fault by the findings and decisions issued in a due process hearing has the right to bring a civil action in State or Federal court.

General Supervision and Monitoring of Dispute Resolution Procedures

Resolution of a dispute, if needed, must include:

- Technical assistance activities.
- Negotiations.
- Findings of non-compliance and corrective actions to achieve compliance.

Additionally, the resolution of the complaint may lead to review and revision of state policy and procedures.

Reporting Dispute Resolution:

If the investigation determines a violation of federal/state statute(s) or regulation(s), or of IDEA/Part C policies or procedures occurred, SCDHHS will work with IDEA/Part C program to ensure:

- Distribution of yearly statistical reports to the State Interagency Coordinating Council.
- Compilation of annual statistical information will be compiled by the IDEA/Part C Procedural Safeguards Officer and incorporated into the Annual Performance Report (APR) on the State Performance Plan (SPP).

Appendix A: Definitions

Assistive Technology:

An Assistive Technology device means any item, piece of equipment, or product system whether acquired commercially off the shelf, modified, or customized that is used to increase, maintain, or improve functional capabilities of a child with a disability.

Confidentiality of Information and Access to Records (34 CFR 99.3 and 34 CFR §§ 303.14-15, 303.29, 303.48, 303.401-403, 303.405-407, 303.409-410, 303.416-417):

The confidentiality of any personally identifiable information collected, used, or maintained, must be ensured including the right of parents to written notice of and written consent of the exchange of information among participating state agencies and EIS providers consistent with federal and state law.

Definitions:

- “Personally identifiable” means information personally identifiable information that includes:
 - The child’s name;
 - The name of the child’s parent or other family member;
 - The address of the child or child’s family;
 - A personal identifier, such as the child’s social security number or child’s number;
 - A list of personal characteristics that would make the child’s identity easily traceable; or
 - Other information that would make the child’s identity easily traceable
- "Destruction" means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personal identifiable.
- “Early Intervention records” mean all records regarding a child that are required to be collected, maintained, or used under IDEA/Part C.
- Confidentiality requirements apply to any individual, EIS provider, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements of IDEA/Part C. This includes the IDEA/Part C system and any individual or entity that provides any Part C services (including service coordination, evaluations and assessments, and other Part C services), but does not include primary referral sources, or public agencies (such as the State Medicaid or CHIP program) or private entities (such as private insurance companies) that act solely as funding sources for Part C services.

Parental Access to Records:

- The parents of infants or toddlers who are referred to, or receive services from IDEA/Part C must be given the opportunity to inspect and review all IDEA/Part C early intervention records about the child and the child’s family that are collected, maintained, or used, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child’s early intervention record.
- Each participating agency and EIS provider on the IFSP shall permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under IDEA/Part C.
 - The agency or EIS provider shall comply with the request without unnecessary delay, and in no case, more than 10 calendar days after the request has been made.
 - In addition, the agency or EIS provider shall provide access to records when requested prior to the IFSP meeting or dispute resolution related to the child's identification, evaluation, or placement, or provision of early intervention services of the child.
- The right to inspect and review records includes:
 - The right to a response from the participating agency and provider on the IFSP to reasonable requests for explanations and interpretations of the records;

- o The right to request that the agency or EIS provider give copies of records containing the information requested, if failure to provide those copies would effectively prevent the parent from exercising their right to inspect/review records; and
- o The right to have a representative of the parent inspect and review records with parental consent.
- o An agency or EIS provider may presume that the parent has authority to inspect and review records relating to his or her child unless the agency or EIS provider has been advised that the parent does not have the authority under applicable state law governing termination of parental rights.
- Record of Access: Each agency and EIS provider on the IFSP shall keep a record of parties obtaining access to early intervention records collected, maintained or used under IDEA/Part C (except access by parents and authorized employees of the agency or EIS provider), including the name of the party, the date of access, and the purpose for which the party is authorized to use the record.
- Records on More Than One Child: If any early intervention record includes information on more than one child, parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.
- List of Types and Locations of Information: Each agency or EIS provider shall provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency, including records on children who have exited from IDEA/Part C.
- Fees
 - o An agency or EIS provider may charge fees for copies of records that are made for parents under IDEA/Part C if the fee does not prevent the parents from exercising their right to inspect and review those records.
 - o An agency or EIS provider may not charge a fee to search for or to retrieve early intervention records.
 - o An agency or EIS provider must give at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.
- Amendment of Records at Parent's Request
 - o A parent who believes information in early intervention records collected, maintained, or used under IDEA/Part C is inaccurate or misleading or violates privacy or other rights of the child or parent may request the agency or EIS provider that maintains the information to amend the information.
 - o The agency or EIS provider shall decide whether to amend the information in accordance with the request within a reasonable period after receipt of the request.
 - o If the agency or EIS provider refuses to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing.

Consent to Release Information:

- Written parental consent must be obtained before personally identifiable information is disclosed to anyone other than authorized representatives, officials, or employees of agencies or EIS providers collecting, maintaining, or using the information in the early intervention record, or that is used any purpose other than meeting a requirement of IDEA/Part C.
- An agency/institution subject to 34 CFR Part 99 shall not release information from the early intervention record to agencies or EIS providers without parental consent unless authorized to do so under FERPA, 99.31 and state law.

Safeguards:

- Each agency and EIS provider shall protect the confidentiality of personally identifiable information in accordance with state and federal law and IDEA/Part C's confidentiality and privacy policy.
- One official at each of the agencies and EIS providers shall assume responsibility for ensuring confidentiality of personally identifiable information.
- All persons collecting or using personally identifiable information must receive training or instruction regarding state law, IDEA/Part C policy, and regulations of Part C of IDEA (34 CFR Part 300) and FERPA (34 CFR Part 99)

- Each agency and EIS provider must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Destruction of Information:

- The Intake Coordinator, and annually, the Service Coordinator, must inform parents when personally identifiable information collected, maintained, or used by IDEA/Part C is no longer needed to provide services to the child or family and the early intervention record will be destroyed unless the family requests the record to be kept. These requirements are enforced under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232, and EDGAR, 34, CFR parts 76 and 80.
- If the early intervention record is destroyed, the IDEA/Part C system must maintain a permanent record of a child's name, date of birth, parent contact information (including address and phone number), names of Service Coordinator(s) and EIS provider(s) and exit date (including year and age upon exit, and any programs entered into upon exiting) without time limitation.

Enforcement:

- IDEA/Part C shall collect and maintain information through its general supervision and monitoring processes to ensure all requirements governing the confidentiality of records and maintenance of information maintained are being implemented by agencies and EIS providers.
- Each agency and EIS provider must assure that they will comply with the confidentiality requirements through for grants/contracts, EIS provider agreements (including sub-contractors of EIS providers), Memoranda of Agreement, and consultant contracts. Each agency and EIS provider must have policies and procedures that include the compilation, maintenance, access to and confidentiality of records in accordance with these procedures.
- In the event compliance deficiencies are identified as relates to confidentiality, IDEA/Part C will report the deficiency, in writing, to the applicable agency or EIS provider. This report will describe the unmet requirement leading to the deficiency, specify the action necessary to correct the deficiency, and establish a timeline for implementing corrective action. If corrective action is not taken, and if further assistance under general supervision and monitoring activities are unsuccessful in remedying the deficiency, IDEA/Part C may terminate or not renew the grant, agreement, or contract depending on the seriousness of the findings. For State Agencies, failure to take corrective action may result in interagency dispute resolution proceedings under any existing contract or memorandum of agreement.

Due Process Hearings:

A due process hearing is a formal procedure conducted by an impartial hearing officer. Only families may request a due process hearing and are not required to first request a mediation session. Families seeking a due process hearing must submit their request in writing by fax, mail, or email to the SCDHHS staff assigned to IDEA/Part C disputes. The impartial due process hearing must be completed, and a written decision made within 30 days of the receipt of the request.

FERPA (Family Educational Rights and Privacy Act of 1974):

FERPA is Federal legislation in the United States that protects the privacy of students' personally identifiable information. The act applies to all educational institutions that receive federal funds. FERPA assures that personally identifiable information from educational records will be protected from unauthorized release. Parents have the right to inspect and review records, and the right to challenge the content of the record to ensure that the information it contains is accurate.

Formal, Written Complaints:

Anyone may file a formal, written complaint. The complaint must include a statement that a requirement of the statute or regulations of IDEA/Part C) has been violated, and a statement of the facts on which the complaint is based. Formal, written complaints must be filed with IDEA/Part C within one (1) year of the alleged violation. Under certain circumstances, the period for filing the complaint may be longer. Once the complaint has been

received, SDHHS has 60 days to investigate the complaint, review all relevant information, make an independent determination as to whether or not a violation has occurred, and issue a written decision to the complainant that addresses each allegation in the complaint and that contains the facts and conclusions as well as the reasons for the final decision.

Impartial:

Impartial means that the investigator, mediator, and/or due process hearing office appointed to the dispute must have no conflicts of interest with the individual requesting dispute resolution, the subject of the complaint, mediation, or due process hearing, IDEA/Part C or SCDHHS.

Mediation:

Mediation is voluntary and freely agreed to by both parties. It provides an opportunity to resolve disagreements in a non-adversarial, informal manner. Only parents may request mediation, but they are not required to use it. Mediation may not be used to deny or delay the right to an impartial due process hearing or to deny any other rights under IDEA/Part C. Impartial mediators may not be IDEA/Part C employees and do not have a personal or professional interest that would conflict with the objectivity in implementing the process.

Native Language (34 CFR 303.25):

- Native language, when used with respect to an individual who is considered Limited English Proficient (LEP), is defined as the language normally used by that individual, the language normally used by the parents of the child, and the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.
- Native Language, when used with respect to an individual who is deaf or hard of hearing, blind, or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).

Parental Consent and Ability to Decline Services (34 CFR 303.7, 303.420):

IDEA/Part C must ensure parental consent is obtained before:

- Administering screening procedures that are used to determine whether a child is suspected of having a disability;
- Any evaluations and assessments of a child are conducted;
- EIS are initiated or when it is proposed the frequency and intensity of services are to be changed on the IFSP;
- Private insurance is used to help cover the cost of EIS; and;
- Disclosure of personally identifiable information.

If a parent does not give consent the Intake Coordinator or Service Coordinator must make reasonable efforts to ensure that the parent:

- Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and
- Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.

IDEA/Part C may not use due process hearings to challenge a parent’s refusal to provide any consent that is required under this section.

The contents of the Individual Family Service Plan must be fully explained to the parents and informed written consent from the parents must be obtained prior to the provision of early intervention services described in the plan. If the parents do not provide consent with respect to an early intervention service or withdraw consent after first providing it, that service may not be provided. The early intervention services to which parental consent is obtained must be provided.

Consent means:

- The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language as defined above.
- The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought. The consent describes that activity and lists the early intervention records (if any) that will be released and to whom; and
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
- If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked)

Right to Decline Services:

The parents of an infant or toddler with a disability have the right to:

- Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention service.
- May decline a service after first accepting it, without jeopardizing other early intervention services.

Prior Written Notice (34 CFR 303.421):

Prior Written Notice (PWN) must be given to parents in a reasonable time when a Service Coordinator or EIS provider proposes a change or refuses to initiate or change any of the following:

- Initial and annual eligibility evaluations;
- Initial and annual family and child assessments;
- Developing, reviewing, or evaluating the Individualized Family Service Plan;
- Adding, changing, or stopping a service on the Individualized Family Service Plan or the source of payment of a service; and
- The transition planning conference.

The notice must list:

- The action that is being proposed or refused;
- The reasons for taking the action;
- All procedural safeguards that are available; including a description of how to file a formal, written compliant, request mediation, and request a due process hearing; and
- Any timelines under the procedures for filing a complaint to contest the proposed action of the notice.

The notice must be:

- Written in language understandable to the general public; and
- Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- If the native language or other mode of communication of the parent is not a written language, the Intake Coordinator or Service Coordinator must take steps to ensure that:
 - o The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
 - o The parent understands the notice; and
 - o There is written evidence that the above requirements have been met.