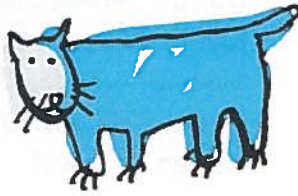


Mediation is when everyone (e.g. our family, service providers, etc.) comes together and works out a solution.



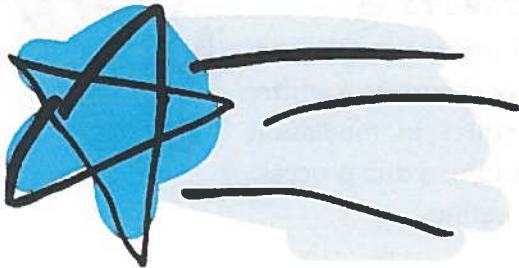
A due process hearing is an administrative hearing conducted by the Department of Health. An impartial hearing officer makes a decision.

Family's Right To Make A Complaint

We can also make a complaint to the Early Intervention Section if we think the Department of Health is not following Federal or State requirements for early intervention services.

Family's Right For Continued Service

Our services continue pending the outcome of our complaint, mediation, and/or due process hearing.



For more information call:
The Early Intervention Referral Line

Oahu
594-0066
or
Neighbor Islands
Call Toll Free:
1-800-235-5477

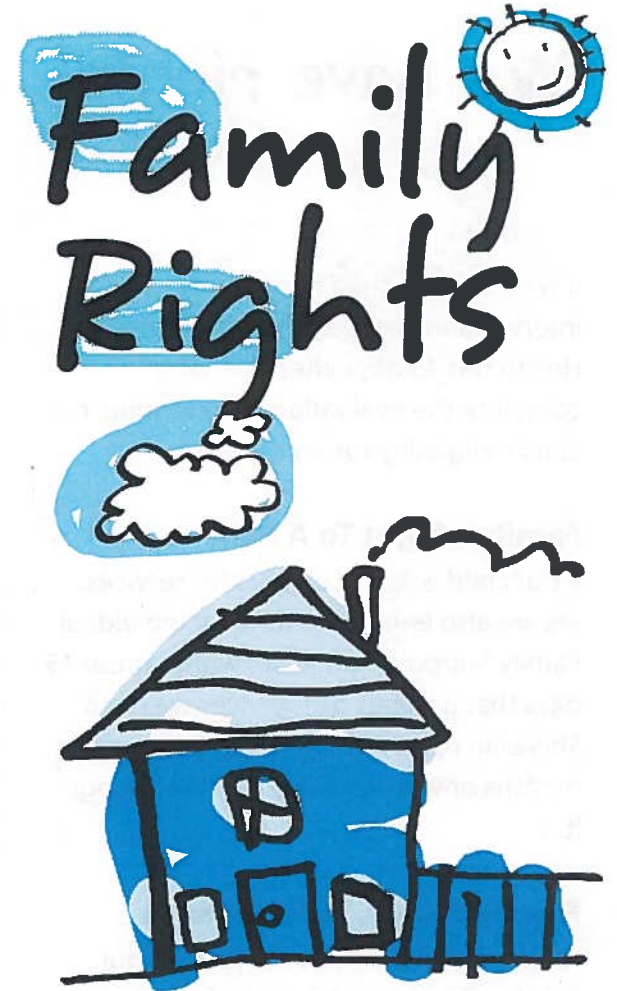
TTY is available
Monday to Friday
8:00 am - 4:00 pm

If you are calling after hours,
please leave a message
and your call will be returned.



The Hawaii Department of Health provides access to activities without regard to race, color, national origin (including language), age, sex, religion, or disability. Write or call our Affirmative Action Officer at Box 3378, Honolulu, HI 96801-3378 at (808) 586-4616 (voice/tty) within 180 days of a problem.

Rev. 10/15



On behalf of infants & toddlers with special needs



Early Intervention Section
Hawaii Department of Health

We have rights!

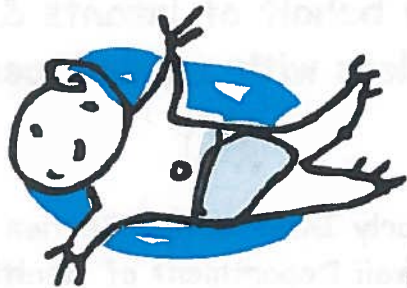
If we think our child needs early intervention services, the Department of Health has 45 days after referral to complete the evaluation to determine our child's eligibility for services.

Family's Right To A Plan

If our child is found eligible for services, we are also entitled to have an Individual Family Support Plan (IFSP) within these 45 days that outlines the services we need. This plan must also be reviewed every six months or whenever we need to change it.

Family's Right To Assistance

We can include other members of our family, a friend, an advocate (supporter), and /or even an attorney at our IFSP meeting.



Family's Right To Care Coordination

As soon as we are referred for services, we have the right to a care coordinator to give us a hand in getting the services we need.

Family's Right to Give Permission

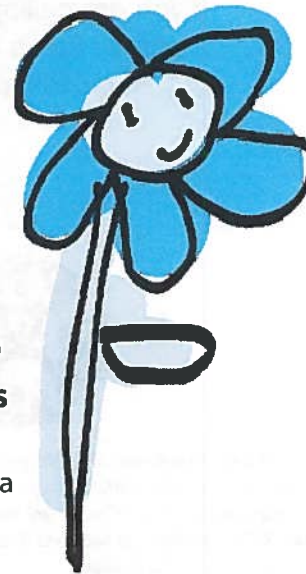


We must be informed before any evaluation or services are provided and we must agree in writing.

We have needs!

Family's Right To Understand

If English is not our native language, or if we need to use sign language or other means of communication, we have the right to interpreter services.



Family's Right To Examine Records

We have the right to examine and obtain a copy of our records.

Family's Right To Privacy

No information that is personally identifiable concerning anyone in our family can be released without our written approval.



We have concerns!

Family's Right To Disagree

Should we disagree with any of the recommendations being made or think we are not receiving the services we need, we have the right to voice our concerns.

If we have a complaint about the provision of services, we can talk it over with:

- our care coordinator
- the program manager
- the early intervention supervisor

Family's Right To Mediation And/Or Due Process

If we are not satisfied, we can make a written request for mediation and/or a due process hearing.



Individuals with Disabilities Education Act (IDEA)

Part C Procedural Safeguard Requirements

(34 CFR §§303.400–303.449)

Sec. 303.400 General responsibility of lead agency for procedural safeguards.

Each lead agency must--

- Establish or adopt procedural safeguards that meet the requirements of this subpart;
- Ensure effective implementation of the safeguards by each participating agency in the statewide system that is involved in the provision of early intervention services under this part; and
- Make available to parents an initial copy of the child's early intervention record, at no cost to the parents.

Sec. 303.401 Confidentiality and opportunity to examine records.

(a) General. Each State must ensure that the parents of a child referred under this part are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with Federal and State laws.

(b) Confidentiality procedures. As required under sections 617(c) and 642 of the Act, the regulations in §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR part 99. Each State must have procedures in effect to ensure that--

- Participating agencies (including the lead agency and EIS providers) comply with the Part C confidentiality procedures in §§303.401 through 303.417; and
 - The parents of infants or toddlers who are referred to, or receive services under this part, are afforded the opportunity to inspect and review all Part C early intervention records about the child and the child's family that are collected, maintained, or used under this part, 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 under this part.
- (c) Applicability and timeframe of procedures. The confidentiality procedures described in paragraph (b) of this section apply to the personally identifiable information of a child and the child's family that--
- Is contained in early intervention records collected, used, or maintained under this part by the lead agency or an EIS provider; and
 - Applies from the point in time when the child is referred for early intervention services under this part until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable Federal and State laws.

(d) Disclosure of information. (1) Subject to paragraph (e) of this section, the lead agency must disclose to the SEA and the LEA where the child resides, in accordance with §303.209(b)(1)(i) and (b)(1)(ii), the following personally identifiable information under the Act:

- A child's name.
 - A child's date of birth.
 - Parent contact information (including parents names, addresses, and telephone numbers).
- (2) The information described in paragraph (d)(1) of this section is needed to enable the lead agency, as well as LEAs and SEAs under Part B of the Act, to identify all children potentially eligible for services under §303.211 and Part B of the Act.
- (e) Option to inform a parent about intended disclosure. (1) A lead agency, through its policies and procedures, may require EIS providers, prior to making the limited disclosure described in paragraph (d)(1) of this section, to inform parents of a toddler with a disability of the intended disclosure

and allow the parents a specified time period to object to the disclosure in writing.

(2) If a parent (in a State that has adopted the policy described in paragraph (e)(1) of this section) objects during the time period provided by the State, the lead agency and EIS provider are not permitted to make such a disclosure under paragraph (d) of this section and

Sec.303.209(b)(1)(i) and (b)(1)(ii).

(Authority: 20 U.S.C. 1412(a)(8), 1412(a)(9), 1417(c), 1435(a)(5), 1437(a)(9), 1439(a)(2), 1439(a)(4), 1439(a)(6), 1442)

Sec. 303.402 Confidentiality.

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by lead agencies and EIS providers pursuant to Part C of the Act, and consistent with §§303.401 through 303.417. The regulations in §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR part 99.

(Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1442)

Sec. 303.403 Definitions.

The following definitions apply to §§303.402 through 303.417 in addition to the definition of personally identifiable information in §303.29 and disclosure in 34 CFR 99.3:

- Destruction means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under §303.29.
- Early intervention records mean all records regarding a child that are required to be collected, maintained, or used under Part C of the Act and the regulations in this part.
- Participating agency means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the Act and the regulations in this part with respect to a particular child. A participating agency includes the lead agency and EIS providers 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.

(Authority: 20 U.S.C. 1221e-3, 1417(c), 1435(a)(5), 1439(a)(2), 1442)

Sec. 303.404 Notice to parents.

The lead agency must give notice when a child is referred under Part C of the Act that is adequate to fully inform parents about the requirements in §303.402, including--

- A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;
- A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in §§303.401 through 303.417; and
- A description of the extent that the notice is provided in the native languages of the various population groups in the State.

(Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1442)

Sec. 303.405 Access rights.

- Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to §§303.430(d) and 303.435 through 303.439, and in no

case more than 10 days after the request has been made.

(b) The right to inspect and review early intervention records under this section includes--

- The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;
 - The right to request that the participating agency provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 - The right to have a representative of the parent inspect and review the early intervention records.
- (c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been provided documentation that the parent does not have the authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

Sec. 303.406 Record of access.

Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under Part C of the Act (except access by parents and authorized representatives and employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.

(Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1439(a)(4), 1442)

Sec. 303.407 Records on more than one child.

If any early intervention record includes information on more than one child, the 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.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

Sec. 303.408 List of types and locations of information.

Each participating agency must provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

Sec. 303.409 Fees for records.

- Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records, except as provided in paragraph (c) of this section.
- A participating agency may not charge a fee to search for or to retrieve information under this part.

(c) A participating agency must provide 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.

(Authority: 20 U.S.C. 1417(c), 1432(4)(B), 1439(a)(2), 1439(a)(4), 1442)

Sec. 303.410 Amendment of records at a parent's request.

(a) A parent who believes that information in the early intervention records collected, maintained, or used under this part is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the participating agency that maintains the information amend the information.

(b) The participating agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the participating agency refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §303.411.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

Sec. 303.411 Opportunity for a hearing.

The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a due process hearing under the procedures in §303.430(d)(1) provided that such

hearing procedures meet the requirements of the hearing procedures in §303.413 or may request a hearing directly under the State's procedures in §303.413 (i.e., procedures that are consistent with the FERPA hearing requirements in 34 CFR 99.22).

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

Sec. 303.412 Result of hearing.

(a) If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child or parent, it must amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, it must inform the parent of the right to place in the early intervention records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the early intervention records of the child under this section must--

- Be maintained by the agency as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency; and
- If the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

Sec. 303.413 Hearing procedures.

A hearing held under §303.411 must be conducted according to the procedures under 34 CFR 99.22.

(Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

Sec. 303.414 Consent prior to disclosure or use.

(a) Except as provided in paragraph (b) of this section, prior parental consent must be obtained before personally identifiable information is--

- Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) A lead agency or other participating agency may not disclose personally identifiable information, as defined in §303.29, to any party except participating agencies (including the lead agency and EIS providers) that are part of the State's Part C system without parental consent unless authorized to do so under--

- Sections 303.401(d), 303.209(b)(1)(i) and (b)(1)(ii), and 303.211(b)(6)(ii)(A); or
- One of the exceptions enumerated in 34 CFR 99.31 (where applicable to Part C), which are expressly adopted to apply to Part C through this reference. In applying the exceptions in 34 CFR 99.31 to this part, participating agencies must also comply with the pertinent conditions in 34 CFR 99.32, 99.33, 99.34, 99.35, 99.36, 99.38, and 99.39; in applying these provisions in 34 CFR part 99 to Part C, the reference to--
 - 34 CFR 99.30 means §303.414(a);
 - "Education records" means early intervention records under §303.403(b);
 - "Educational" means early intervention under this part;
 - "Educational agency or institution" means the participating agency under §303.404(c);
 - "School officials and officials of another school or school system" means qualified personnel or service coordinators under this part;
 - "State and local educational authorities" means the lead agency under §303.22; and
 - "Student" means child under this part.

(c) The lead agency must provide policies and procedures to be used when a parent refuses to provide consent under this section (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this part), provided that those procedures

do not override a parent's right to refuse consent under §303.420. (Authority: 20 U.S.C. 1417(c), 1439(a)(2), 1439(a)(4), 1442)

Sec. 303.415 Safeguards.

- (a) Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.
- (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
- (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §§303.401 through 303.417 and 34 CFR part 99.
- (d) Each participating agency 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.

(Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1439(a)(4), 1442)

Sec. 303.416 Destruction of information.

- (a) The participating agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR parts 76 and 80.
- (b) Subject to paragraph (a) of this section, the information must be destroyed at the request of the parents. However, 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 data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation.

(Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1439(a)(4), 1442)

Sec. 303.417 Enforcement.

The lead agency must have in effect the policies and procedures, including sanctions and the right to file a complaint under §§303.432 through 303.434, that the State uses to ensure that its policies and procedures, consistent with §§303.401 through 303.417, are followed and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1417(c), 1435(a)(5), 1439(a)(2), 1439(a)(4), 1442)

Sec. 303.420 Parental consent and ability to decline services.

- (a) The lead agency must ensure parental consent is obtained before--
 - (1) Administering screening procedures under §303.320 that are used to determine whether a child is suspected of having a disability;
 - (2) All evaluations and assessments of a child are conducted under §303.321;
 - (3) Early intervention services are provided to the child under this part;
 - (4) Public benefits or insurance or private insurance is used if such consent is required under §303.520; and
 - (5) Disclosure of personally identifiable information consistent with §303.414.
- (b) If a parent does not give consent under paragraph (a)(1), (a)(2), or (a)(3) of this section, the lead agency must make reasonable efforts to ensure that the parent--
 - (1) Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and
 - (2) Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.
- (c) The lead agency may not use the due process hearing procedures under this part or Part B of the Act to challenge a parent's refusal to provide any consent that is required under paragraph (a) of this section.
- (d) The parents of an infant or toddler with a disability--
 - (1) Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention service under this part at any time, in accordance with State law; and
 - (2) May decline a service after first accepting it, without jeopardizing other early intervention services under this part.

(Authority: 20 U.S.C. 1436(e), 1439(a)(3))

Sec. 303.421 Prior written notice and procedural safeguards notice.

- (a) General. Prior written notice must be provided to parents a reasonable time before the lead agency or an EIS provider proposes, or refuses, to initiate

or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family.

- (b) Content of notice. The notice must be in sufficient detail to inform parents about--
 - (1) The action that is being proposed or refused;
 - (2) The reasons for taking the action; and
 - (3) All procedural safeguards that are available under this subpart, including a description of mediation in §303.431, how to file a State complaint in §§303.432 through 303.434 and a due process complaint in the provisions adopted under §303.430(d), and any timelines under those procedures.

(c) Native language.

- (1) The notice must be--
 - (i) Written in language understandable to the general public; and
 - (ii) Provided in the native language, as defined in §303.25, of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (2) If the native language or other mode of communication of the parent is not a written language, the public agency or designated EIS provider must take steps to ensure that--
 - (i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
 - (ii) The parent understands the notice; and
 - (iii) There is written evidence that the requirements of this paragraph have been met.

(Authority: 20 U.S.C. 1439(a)(6)-(7))

Sec. 303.422 Surrogate parents.

- (a) General. Each lead agency or other public agency must ensure that the rights of a child are protected when--
 - (1) No parent (as defined in §303.27) can be identified;
 - (2) The lead agency or other public agency, after reasonable efforts, cannot locate a parent; or
 - (3) The child is a ward of the State under the laws of that State.
- (b) Duty of lead agency and other public agencies.
 - (1) The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This assignment process must include a method for--
 - (i) Determining whether a child needs a surrogate parent; and
 - (ii) Assigning a surrogate parent to the child.
 - (2) In implementing the provisions under this section for children who are wards of the State or placed in foster care, the lead agency must consult with the public agency that has been assigned care of the child.
- (c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by the lead agency under paragraph (b)(1) of this section, may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements in paragraphs (d)(2)(i) and (e) of this section.
- (d) Criteria for selection of surrogate parents.
 - (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.
 - (2) Public agencies must ensure that a person selected as a surrogate parent--
 - (i) Is not an employee of the lead agency or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child;
 - (ii) Has no personal or professional interest that conflicts with the interest of the child he or she represents; and
 - (iii) Has knowledge and skills that ensure adequate representation of the child.
- (e) Non-employee requirement; compensation. A person who is otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the

agency to serve as a surrogate parent.

- (f) Surrogate parent responsibilities. The surrogate parent has the same rights as a parent for all purposes under this part.
- (g) Lead agency responsibility. The lead agency must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent. (Authority: 20 U.S.C. 1439(a)(5))

Sec. 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. (Approved by Office of Management and Budget under control number 1820-0678 and 1820-NEW) (Authority: 20 U.S.C. 1415(e), 1415(f)(1)(A), 1415(f)(3)(A)-(D), 1439)
- Sec. 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 confidential 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 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))
- Sec. 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.
- (Approved by Office of Management and Budget under control number 1820-NEW)

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

Sec. 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--

- (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.

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

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

Sec. 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.

(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.

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

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

Sec. 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))

Sec. 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;
- (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))

Sec. 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))

Sec. 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))

Sec. 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.

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

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

Sec. 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--

- (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)

Sec. 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 Sec. 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.
- (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 Sec. 303.440(c) for the due process hearing described in Sec. 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)
- Sec. 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--

- 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;
- (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)
- Sec. 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.
- (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)
- Sec. 303.445 Hearing officers.**
- (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)
- Sec. 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--
- (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 Sec. 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)
- Sec. 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)
- Sec. 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)
- Sec. 303.449 State enforcement mechanisms.**
- Notwithstanding §§303.431(b)(6) and 303.442(d)(2), which provide for judicial enforcement of a written agreement reached as a result of a mediation or a resolution meeting, there is nothing in this part that would prevent the State from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court or competent jurisdiction or in a district court of the United States.
- (Authority: 20 U.S.C. 1415(e)(2)(F), 1415(f)(1)(B), 1439)