

# Impartial Due Process Hearings

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An impartial due process hearing is a formal procedure conducted by an impartial hearing officer and is an option for families seeking to file an "Individual Child Complaint". Families seeking an impartial due process hearing must submit their request in writing directly to the State Lead Agency explaining their complaints. The issue of concern must be submitted and received by the State Lead Agency within one year of the alleged violation.

The complaint must include the following information:

- A statement that the lead agency, public agency, or early intervention services provider has violated a requirement of Part C.
- The facts on which the statement is based.
- The signature and contact information for the person filing the complaint.
- If alleging violations with respect to a specific child:
  - The child's name and address where the child resides.
  - The name of the child's early intervention services contract or early intervention services provider.
  - A description of the nature of the child's problem including facts relating to the problem.
  - A proposed resolution of the problem to the extent known and available at the time the complaint is filed.

Only the issues included in the complaint notice will be considered in the impartial due process hearing.

Impartial hearing officers are appointed to conduct the due process hearings.

Hearing officers must have knowledge about provisions of Part C and the needs of and services available for eligible children and their families.

Hearing officers must not be an employee of the lead agency or an early intervention services provider involved in the provision of early intervention services or care of the child.

Hearing officers must not have a personal conflict that may impact his or her objectivity in implementing the process.

A person who otherwise qualifies 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.

Hearing officers perform the following duties:

- Listen to the presentation of relevant views about the complaint/ disagreement, examine all information relevant to the issues, and seek to reach a timely resolution of the disagreement; and
- Provide a record of the proceedings at the cost of the state, including a written decision (hearing only).

Under Part C, parents are given the rights listed below in any impartial due process hearing carried out under these procedures:

- To be accompanied and advised by counsel (at your expense) and by individuals with special

knowledge or training about early intervention services for children eligible under Part C (at your expense).

- To present evidence and confront, cross examine, and compel the attendance of witnesses.
- To prohibit the introduction of any evidence at the hearing that has not been disclosed to you at least five calendar days before the proceeding.
- To obtain a written or electronic verbatim (word by word) transcription of the hearing at no cost to you.
- To obtain written findings of fact and decisions at no cost to you.

The impartial due process hearing shall be carried out at a time and place that is reasonably convenient to the family.

The impartial due process proceeding must be completed and a written decision must be mailed to each of the parties no later than thirty (30) days after the State Lead Agency receives the complaint (Mediation, if attempted, must occur within the same thirty (30) days). The hearing officer may grant specific extensions for the due process proceeding of time beyond the 30 days at the request of either party. Any party not satisfied by the findings and decisions of the due process hearing has the right to bring civil action in state or federal court.

During the time period of any proceeding involving a complaint, unless the parties in the impartial due process hearing otherwise agree, the child and family will continue to receive the appropriate early intervention services being provided.

When a complaint involves an application for initial services, the child and family must be provided those services that are not in dispute.

## **Service Coordinator Responsibilities**

The Service Coordinator does the following regarding an individual child complaint:

- Provides the parent/guardian with information about options, including mediation and formal hearings.

When the family elects to use mediation, the mediation must be completed in a timely manner following the receipt of the request by the State Lead Agency and may not be used to deny or delay a family's rights to an impartial due process hearing or to deny any of the family's other rights under Part C.

When the family elects to use formal hearing process, they must submit a complaint notice in writing to the State Lead Agency.

- Informs the parent/guardian of free or low-cost legal or advocacy assistance that may be available to them, and a list of organizations that provide or arrange such assistance (e.g., Comprehensive Advocacy, Inc [CO-AD], Legal Aid, or Idaho Parents Unlimited [IPUL]).
- Informs the local supervisor and central office program manager of the complaint.
- Advises and, at the parent's request, may assist the parent/guardian to put concerns in writing and forward it to: Infant Toddler Program Manager, Infant Toddler Program, P.O. Box 83720 – 5th Floor, Boise, Idaho 83720-0036.