



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

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MEMORANDUM

TO: Part C Lead Agencies

FROM: Kenneth R. Warlick *Kenneth R. Warlick*
Director
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SUBJECT: Complaint Resolution Procedures under Part C of the Individuals with Disabilities Education Act (Part C)

INTRODUCTION

The purpose of this Memorandum is to provide guidance on the State complaint procedures that are set out at 34 CFR §§303.510-303.512 of the final Part C regulations, published in the Federal Register on March 12, 1999. The Department wishes to highlight these procedures to provide for more clarity and consistency in the effective implementation of Part C of the Individuals with Disabilities Education Act (Part C). For State complaint procedures applicable to Part B of the Act, refer to OSEP Memorandum 00-20 being issued at the same time as this memorandum.

Part C's State complaint procedures are critical to each State's exercise of its general supervision responsibilities because they provide parents with an important means of ensuring that the early intervention and developmental needs of their children are met and provide the lead agency with a powerful tool to identify and correct noncompliance with Part C of the IDEA and its

implementing regulations.¹ As part of its general supervisory responsibility, each lead agency must implement complaint resolution procedures in a manner that meets the requirements of §§303.510-303.512 (see Section I). Because of the important role that effective State complaint resolution plays for parents, responsible entities (including any public agency or private service provider acting on behalf of the State), and the lead agency in meeting its general supervisory responsibility, each State's complaint procedures are addressed in OSEP's continuous improvement monitoring process. Implementation of the State complaint procedures, which is the responsibility of the lead agency, has the potential for providing a less costly and more efficient mechanism for resolving disputes than the impartial due process hearing system. Therefore, effective implementation of the complaint resolution procedures likely will have a positive impact on both parents and state lead agencies.

This Memorandum is divided into three sections. Section I outlines the State complaint procedures, focusing on the language of §§303.510-303.512. Section II provides information regarding the relationship between the complaint resolution and due process hearing procedures in the Part C regulations. Finally, Section III presents in question-and-answer format certain areas of the State complaint procedures that are of key concern to the public.

I. STATE COMPLAINT PROCEDURES

The following is a description of the requirements for State complaint procedures, as set out in §§303.510-303.511.

A. Adoption of State Complaint Procedures: Filing a Complaint. (§§303.510 and 303.511)

Generally, §303.510 requires each lead agency to adopt written procedures for resolving any complaint, including any complaint filed by any organization or individual from another State, that any public agency or private service provider (hereinafter, "entity") is violating a requirement of Part C. Under §303.510(a)(1), these procedures must --

1. Provide for the filing of a complaint with the lead agency;
2. At the lead agency's discretion, provide for the filing of a complaint with a public agency, and the right to have the lead agency review the public agency's decision on the complaint; and

¹ Under §303.400(a), each lead agency is responsible for: (a) establishing or adopting the procedural safeguards that meet the requirements of Subpart E of Part C (§§303.400-460); and (b) ensuring effective implementation of the safeguards by each public agency in the State that is involved in the provision of early intervention services under Part C.

Further, under §303.501(a), each lead agency is responsible for (1) the general administration and supervision of programs and activities receiving assistance under Part C; and (2) the monitoring of programs and activities used by the State to carry out Part C, whether or not these programs or activities are receiving assistance under Part C, to ensure that the State complies with Part C.

3. Provide for wide dissemination to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under §§303.510-303.512. Another section of the regulations, §303.403(b)(4), requires that the procedural safeguards notice that goes to individual parents include a full explanation of the State complaint procedures, including how to file a complaint and the timelines under those procedures.

As specified at §303.511(a)(1) and (2), an organization or individual may file a signed written complaint that includes: (1) a statement that an entity has violated a requirement of Part C or its regulations; and (2) the facts on which the statement is based. Section 303.511(b) provides that an alleged violation must have occurred not more than one year prior to the date that the complaint is received by the public agency unless a longer period is reasonable because the violation is continuing for the child or other children, or the complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years prior to the date the complaint is received by the public agency. Allegations of violations outside of these time frames do not have to be accepted by the public agency.

B. Minimum State Complaint Procedures. (§303.512)

Each lead agency, under §303.512(a), is required to include in its complaint procedures a time limit of 60 calendar days after a complaint is filed under §303.510(a) to –

1. Carry out an independent on-site investigation, if the lead agency determines that such an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegation(s) in the complaint;
3. Review all relevant information and make an independent decision as to whether the entity is violating a requirement of Part C; and
4. Issue a written decision that addresses each allegation in the complaint and contains –
 - a. Findings of fact and conclusions, and
 - b. The reasons for the lead agency's final decision.

In addition, the State's complaint procedures must include the following:

- Permitting an extension of the time limit under §303.512(a) only if exceptional circumstances exist with respect to a particular complaint (§303.512(b)(1)), and

- Procedures for the effective implementation of the lead agency's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance (§303.512(b)(2)).

II. RELATIONSHIP BETWEEN THE STATE COMPLAINT RESOLUTION AND DUE PROCESS HEARING SYSTEMS

Under the Part C regulations, parents of children with disabilities have two separate means available to them for resolving disputes with entities concerning services for their children -- i.e., (1) the State complaint resolution system required in §§303.510-303.512 (the subject of this memorandum), and (2) the impartial due process hearing system required in §303.420. States also are required to have mediation, consistent with §303.419, available at a minimum when a due process hearing is requested.

The State complaint procedures are available for resolving any complaint that meets the requirements of §303.512, including: (1) complaints that raise systemic issues, and (2) individual child complaints. Parents may use (but are not required to use) the complaint procedures -- in addition to the due process hearing system -- to resolve disagreements with entities over any matter concerning the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family, as well as any other allegation that a has violated Part C.

It is impermissible under Part C for a lead agency to: (1) have a procedure that removes complaints about early intervention services or any other matter concerning the identification, evaluation, or placement of the particular child or any other allegation of a violation of Part C or its implementing regulations from the jurisdiction of its State complaint resolution system, or (2) advise or require parents to request a due process hearing before the lead agency can initiate a complaint investigation. A lead agency cannot deny a request for a due process hearing because a State complaint was not first filed. Thus, whenever a lead agency receives a signed written complaint that alleges that an entity is violating a requirement under Part C, including any matter for which parents could request a due process hearing, the lead agency, subject to §303.512(b), must resolve the complaint within 60 calendar days, using the procedures in §303.512 and outlined in Section I above.

In addition, the lead agency is to establish and implement procedures to allow parties to resolve disputes through a mediation process that, at a minimum, must be available whenever a due process hearing is requested. (§303.419(a)). These procedures must ensure that the mediation process is: (1) voluntary on the part of parties; (2) 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, including the right to file a complaint and to resolve the complaint within 60 days; and (3) conducted by a qualified and impartial mediator who is trained in effective mediation techniques. (§303.419(b)(1)). The State bears the cost of mediation, including meetings, and each session in the mediation process must be scheduled in a timely manner and held in a location that is convenient to the parties to the

dispute. (§303.419(b)(3)-(4)). Any agreement reached by the parties to the dispute in the mediation process is to be set forth in a written mediation agreement. (§303.419(b)(5)).

If a signed written complaint is received that is also the subject of a due process hearing under §303.420, 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. (§303.512(c)). However, any issue in the complaint that is not a part of the due process action must be resolved within the 60 calendar days using procedures described in §303.512(a)-(b). If an issue is raised that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the lead agency must inform the complainant to that effect. Further, a complaint alleging an entity's failure to implement a due process decision must be resolved by the lead agency.

III. QUESTION & ANSWERS ON PARTICULAR AREAS OF THE STATE COMPLAINT PROCEDURES

Question 1: Who can file a State complaint?

Answer: Not only a child's parent, but *any organization or individual*, may file a signed written complaint that includes: (1) a statement that an entity has violated a requirement of Part C or its implementing regulations; (2) the fact(s) on which the statement is based; and (3) an allegation of a violation that occurred not more than one year prior to the date that the complaint is received, subject to certain exceptions. (See §303.511). This requirement is different for a due process hearing, in which only a parent may initiate a hearing. (§303.420).

Question 2: When an organization or individual, other than a parent, files a State complaint regarding early intervention services for a specific child, how should a lead agency proceed?

Answer: A lead agency is required to resolve any complaint that meets the requirements of §303.511, including a complaint alleging that an entity has failed to provide early intervention services to a child with a disability. Thus, the lead agency would be required to follow the State complaint procedures outlined in §303.512 as it would any other case where a violation of Part C is alleged.

If a complaint is filed by someone other than the parent, the lead agency may not provide personally identifiable information to the non-parent complainant without parent consent. Under §§303.460 and 300.571(a)(1), parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information under Part C.

Question 3: Can an issue(s) that is the subject of a State complaint also be the subject of a due process hearing?

Answer: Yes. As long as the issue(s) is an alleged violation of Part C of the IDEA or its applicable regulations, and it relates to the child's identification, evaluation, or placement of the child, or the provision of early intervention services to the child and the child's family, it could also be the subject of a due process hearing. If this occurs, however, 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. Any issue in the complaint that is not a part of a due process action must be resolved within the 60-calendar day timeline, subject to §303.512(b), using the lead agency's complaint resolution procedures. (§303.512(c)).

Question 4: If a complainant has already filed a State complaint which has not been resolved, can he or she still request a due process hearing?

Answer: Yes. Filing a State complaint does not prevent complainants from requesting a due process hearing. In some cases, the complaint may also be the subject of a due process hearing, or may contain multiple issues of which one or more may be part of the hearing. In those cases, 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 a due process action must be resolved within the 60-calendar day timeline, subject to §303.512(b), using the lead agency's complaint resolution procedures. (§303.512(c)).

Question 5: If a hearing officer rules on an issue(s) raised by the parent in a due process hearing, is there any time in which a subsequent complaint on the same issue may be filed?

Answer: Section 303.512(c)(2) requires that if a hearing officer has already ruled on an issue at a due process hearing, the decision is final and binding. The lead agency must inform the complainant that the hearing decision is binding. The lead agency must use its State complaint resolution procedures to resolve any issue(s) in the complaint that was not resolved in the hearing. In determining that it will not resolve an issue in a complaint because that issue was previously resolved in a due process hearing, the lead agency must ensure that the legal and factual issues are indeed identical. Also, any complaint alleging an entity's failure to implement the due process decision is to be resolved by the lead agency. (§303.512(c)(3)).

Question 6: Since a lead agency may not alter or interfere with a decision rendered by a due process hearing officer, how are situations handled when a subsequent complaint is filed with the lead agency on similar issues?

Answer: A lead agency may resolve an issue(s) raised in a complaint by informing the complainant in writing that the specific issue(s) has been decided in a due process hearing or subsequent administrative or judicial proceeding. If an issue(s) raised in the complaint is **similar** to -- but not the same as -- the specific issue resolved in a due process hearing, the lead agency may not claim that the issue has been resolved in the hearing and must proceed to resolve the issue through its complaint management procedures. Similarly, if **some** -- but not all -- of the issues raised in the complaint have been resolved in a due process hearing, the lead agency must use its complaint resolution procedures to resolve any issue that was not resolved in the hearing. (§303.512(c)).

Questions 7: Does a dispute in an IFSP meeting regarding the appropriateness of early intervention services amount to an allegation of a Part C violation which a lead agency must resolve if a complaint is filed?

Answer: Yes. Under the IDEA, the lead agency is responsible for ensuring that early intervention services have been made available to eligible infants and toddlers with disabilities. If a parent believes that what is offered during an IFSP meeting to his or her child with a disability does not constitute the early intervention services necessary to meet the child's unique needs and files a complaint, the lead agency must resolve the complaint.

A lead agency resolves a complaint challenging the appropriateness of a entity's determination regarding a child's services or placement by determining not only whether the entity has followed the required procedures to reach that determination, but also whether the entity has reached a decision that is consistent with Part C requirements in light of the individual child's abilities and needs. Thus, the lead agency would need to review the evaluation and assessments data in the child's record and any additional data provided by the parties to the complaint and the explanation included in the entity's notice to the parents as to why the agency made the challenged determination regarding the child's services or placement (and/or refused to make an alternative determination). If necessary, the lead agency may need to interview appropriate individuals, to determine: (1) whether the agency followed procedures and applied standards that are consistent with State standards, including the requirements of Part C, and (2) whether the determination made by the entity is consistent with those standards and supported by the data. The lead agency may likely find that the entity has complied with Part C requirements if the agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the child-specific data.

It is important to note that, although decisions of the IFSP team cannot be overturned by the lead agency, the lead agency can, on a case-by-case basis, if it concludes that what has been offered does not meet the needs of the child, order the IFSP team to meet to determine appropriate services for the child. In addition, parents always have the right to challenge the IFSP team's decision by filing a due process hearing and may seek to resolve their disputes through mediation.

Question 8: After the resolution of a State complaint, how must the lead agency report its findings?

Answer: Each lead agency is required to issue a written decision to the complainant that addresses each allegation in the complaint and contains: (1) findings of fact and conclusions, and (2) the reasons for the lead agency's final decision. (§303.512(a)(4)). Further, to ensure corrective action, the lead agency must inform any affected entities of any findings of noncompliance and the required corrective action(s), and ensure that the corrective action is completed within a reasonable period of time. In addition, failure to ensure that the corrective action brings about compliance with the IDEA could result in actions taken against the lead agency.

Question 9: May a lead agency make mediation available when a State complaint is filed?

Answer: Yes. In the interest of building cooperative, collaborative relationships with all parties involved in the education of children with disabilities, in addition to making mediation available when a due process hearing has been requested as required by Part C, States are encouraged to offer mediation when a State complaint has been filed. A lead agency may not require, but may request, that mediation take place before complaint resolution or a hearing. The lead agency may not view the existence of ongoing mediation, in and of itself, as exceptional circumstances under §303.512(b). However, if the parties agree that the complaint resolution timeline should be extended because of mediation, the lead agency may extend the timeline for resolution of the complaint.

Question 10: May a State complaint decision be appealed?

Answer: The regulations are silent as to whether a state complaint decision may be appealed. Part C neither prohibits nor requires the establishment of procedures to permit either party to request reconsideration of a State complaint decision.

Section 303.512 requires that the lead agency issue a final decision on each complaint within 60 calendar days after the complaint is filed, unless the lead agency extends the timeline because exceptional circumstances exist with respect to the particular complaint. This means that, absent an appropriate extension of the timeline for a particular complaint, the State must issue a final decision within 60 calendar days. If that decision requires corrective action (s), the implementation of such corrective actions cannot be delayed pending any procedures for reconsideration of the decision.

A State may choose to establish procedures for reconsideration of complaint decisions that would result in a decision on the reconsideration within 60 calendar days of the date on which the complaint was originally filed. Alternatively, a State may establish procedures for the reconsideration when the reconsideration process would not be completed until later than 60 days after the original filing of the complaint, but only if implementation of any corrective actions required in the lead agency's final decision is not delayed pending the reconsideration process.

However, if the issue(s) is still in dispute, the parent may, if he or she has not already done so, initiate a due process hearing. A decision made in a due process hearing is final. (See §303.423). However, in states that use the Part C due process procedures (§303.419-.425), any party aggrieved by the findings and decision in a due process hearing has the right to bring a civil action in State or Federal court. (§303.424). If a state has adopted the Part B due process procedures (§300.500-.512), the appeal rights in those regulations apply. (See §300.510(b) and §300.512(a)).

Question 11: Under a State's complaint procedures, what are remedies for the denial of early intervention services?

Answer: In resolving a complaint in which there is a finding of a failure by an entity to provide appropriate services, a lead agency, through its general supervisory authority under Part C, is required, as appropriate, to provide remedies for the denial of services. The lead agency must address: (1) how to remediate the denial of the services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and (2) appropriate future provision of services for all infants and toddlers with disabilities. (§303.510(b)).

Question 12: Must a State conduct an independent onsite investigation for every complaint filed?

Answer: No. A lead agency is required to conduct an independent on-site investigation only if it determines that such an investigation is necessary. (§303.512(a)(1)).

Question 13: May a lead agency's complaint investigation determine the appropriateness of an eligibility determination made by a entity?

Answer: In resolving a complaint challenging the appropriateness of a entity's eligibility determination, a lead agency must determine not only whether the entity has followed the required procedures to reach that determination, but also whether the entity has reached a decision that is consistent with Part C requirements in light of the individual child's abilities and needs. The lead agency must determine whether the child was determined eligible based on evidence that he or she met the definition of "infants and toddlers with disabilities" under §303.16 and fell within the age ranges specified at §303.16(a). To do so, the lead agency would need to review the evaluation and assessment data in the child's record and any additional data provided by the parties to the complaint. In addition, the lead agency would need to review the explanation included in the entity's notice to the parents as to why the agency made the challenged eligibility determination (and/or refused to make an alternative determination requested by the parents or others). If necessary, the lead agency may need to interview appropriate individuals, to determine: (1) whether the entity followed procedures and applied standards that are consistent with State standards, including the requirements of Part C, and (2) whether the entity's eligibility determination is consistent with those standards and supported by the evaluation/assessment and other data included in the child's record or the information provided by the parties to the complaint. The lead agency may likely find that the entity has complied with Part C requirements if the agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the child-specific data and is consistent with Part C.

Question 14: When did the removal of the requirement of Secretarial reviews take effect and what should a lead agency develop in lieu of the Secretarial reviews?

Answer: The new regulations, which removed the Secretarial review requirement, took effect on May 11, 1999. Therefore, OSEP is returning requests for Secretarial reviews received after that date to the complainant. The final regulations do not require that a State establish a procedure to replace Secretarial reviews.

Question 15: How does a lead agency resolve a complaint against its own self or its employees?

Answer: The lead agency may either appoint its own personnel to resolve the complaint, or may make arrangements with an outside party to resolve the complaint. If it chooses to use an outside party, however, the lead agency remains responsible for complying with all procedural and remediation steps required under the regulations.