

He Said.....

She Said.....

A Primer on Dispute Resolutions

Creating Connections: Making Meaningful


Differences in the Lives of Families

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Presenters



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Purpose of Presentation



■ Provide:

- Overview of three formal mechanisms that may be used to resolve disputes
- “Tips” for both providers and families as they are going through a formal mechanism of dispute resolution

■ Answer commonly asked questions



Word of Caution

- Information presented today:
 - NOT intended
 - as legal advise
 - as an interpretation of the laws and regulations governing IDEA, Part C in Virginia
 - IS intended
 - to help with the understanding of the implementation of these laws and regulations.
 - WILL NOT cover any specific information about any dispute resolution cases that have been handled by the Part C Office.



Disagreements

- Everyone disagrees at one point or another
- Generally worked out through discussion and negotiation.
- Prior to contacting the Part C Office for assistance:
 - Localities are required to try to resolve disagreements at the local level using:
 - Informal decision-making
 - Conflict Resolution mechanisms
 - Contact the **Family Involvement Project**



**We tried working it out..... But we
can't. What else is there?**

**Administrative Complaint
Mediation (alone or simultaneous with
due process hearing), or
Due Process Hearing**



Administrative Complaints

■ Definition:

- Involves procedure-related disagreement
 - Alleges a violation of Part C requirements
 - May allege a violation concerning an individual child or the child's family
 - May be directed against a policy, pattern or practice that is alleged to be a violation of federal or state law or guideline.
- The complaint cannot address personnel issues. These matters are under the control of the agency employing the individual.



Administrative Complaints (cont.)

- Who can file an administrative complaint?
 - Individual (including parent or organization)
- Is there a time limit?
 - Complaints will be investigated:
 - Not more than one (1) year prior to the date the complaint is received by the Part C Office
 - unless a longer period is reasonable because the alleged violation continues for the child;
 - Not more than three (3) years prior to the date complaint is received by the Part C Office
 - if there is a request for reimbursement.

Examples of Administrative Complaints

- These are a few examples of Administrative Complaints:
 - The local Part C early intervention system is not providing a service listed on the IFSP;
 - The initial IFSP is not developed within 45 calendar days of referral; or
 - The local Part C early intervention system denies a parent's request to review his/her child's early intervention records;
 - Parent's refusal to consent to an action for which parental consent is required



Request Comes In, What Happens Next?

- Part C Office:
 - Receives the “Request for Dispute Resolution”;
 - Assigns it a number and logs it in the Dispute Resolution Log Book (AC#__);
 - Acknowledges receipt of the “Request for Dispute Resolution” to all parties;
 - Provides additional opportunity for informal resolution;
 - Determines with locality, need for an interpreter;
 - Investigates the alleged violations;
 - Documents findings in a “Findings Report”;
 - Follows-Up with the “Findings Report”

Receipt of a “Request for Dispute Resolution”

- Refer to Handout
- Contains:
 - A statement of the violation that has occurred;
 - A statement of the facts on which the complaint is based;
 - A statement of what needs to occur to resolve the dispute
- Needs to be completed in as much detail as possible
- Need a signature on file



Acknowledgement of Receipt of the “Request for Dispute Resolution”

■ **The Part C Office sends a letter**

- To all parties involved in the complaint
- Outlines the nature of the complaint
- Provides parties 10 calendar days to try to resolve the issue(s) through informal mechanisms
- Outlines process that will occur should the issue(s) not be resolved within the 10 calendar days
- Indicates the deadline when the Administrative Complaint must be resolved (60 calendar days from receipt of complaint at the Part C Office)



The Investigation

- Part C Office begins the investigation which may include:
 - On-site visit with locality
 - Interviews with providers, Local System Managers, Other appropriate parties
 - Record Reviews
 - Interview with family member and other appropriate parties
 - An on-site visit may not occur but information will still be gathered through:
 - Record reviews
 - Interviews with providers, Local System Manager
 - Interview with family member and other appropriate parties



The Investigation (cont.)

- The investigation is
 - “Fact finding” ;
 - Determining which laws, regulations and procedures that govern regulations are violated;
 - Gathering relevant information and documentation via phone calls and/or record reviews;
 - Having the complainant submitting additional information to support the alleged violation either orally or in writing.

NOTE: Additional information from either the complainant or agency/provider may be submitted to the Part C Office at any time during the investigation.

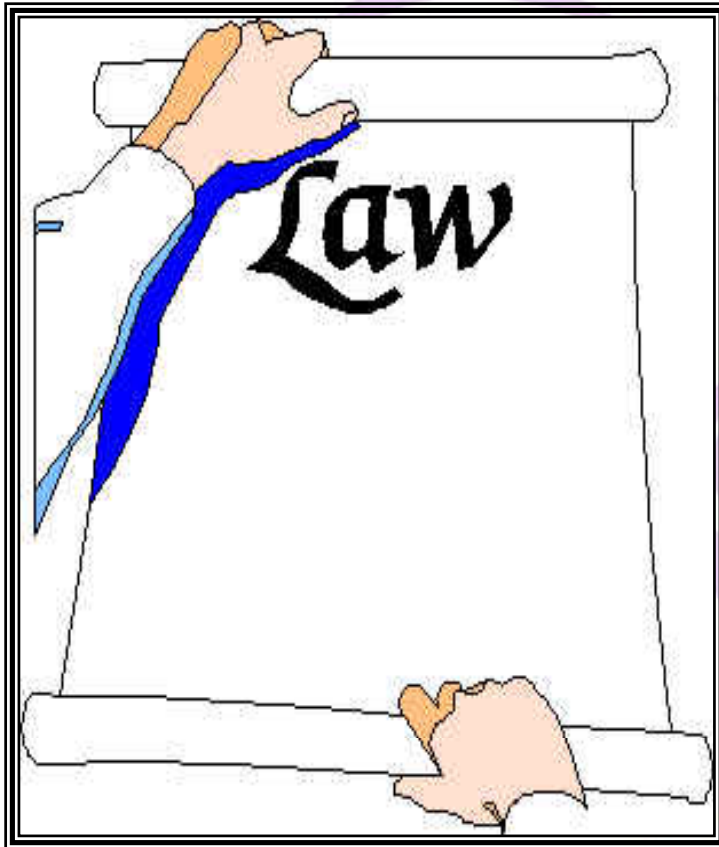


Findings Report

- A written decision based on facts and applicable law is written.
 - Binding document that:
 - Outlines each alleged violation;
 - States the findings of facts related to the violations;
 - “Founded” or “Unfounded”
 - States the conclusion reached;
 - Outlines the reasons for the final decision;
 - Outlines the procedures for implementation of the final decision.
 - Technical Assistance
 - Negotiations
 - Plans of Improvement

What Happens After An Administrative Complaint?

- Locality implements the actions outlined within the “Findings Report”
 - May include, but not limited to:
 - Developing Plans of Improvement to remediate the violation
 - Technical Assistance and/or training
 - Compensatory services to family
 - Quarterly record and/or utilization reviews
 - Reimbursement to insurance companies
 - Send providers to training(s) to enhance knowledge of Part C supports and services
- Part C Office reviews the implementation of the “Findings Report” as part of its statewide monitoring and supervision procedures



***Tips For All
Parties
Involved in An
Administrative
Complaint***



Tips For All Parties Involved In A Complaint

- Speak with appropriate parties as soon as issues arise
 - Don't wait until you feel things are "out of control"
- Try to resolve issues through informal mechanisms
 - Work together to come to an understanding of mutual concerns and an agreements that is in the best interest of the child
- Gather/organize the information you need to address the issues/questions that arise or support your position
- Review these documents:
 - [Notice of Child and Family Rights in the Infant & Toddler Connection of Virginia Part C Early Intervention System](#)
 - [Strengthening Partnerships: A Guide to Family Rights in the Infant & Toddler Connection of Virginia Part C Early Intervention System](#)
 - 34 CFR Part 303, Early Intervention Program for Infants and Toddlers with Disabilities (Part C of the Individuals with Disabilities Education Act) 303.510-512

More Tips For All Parties Involved In A Complaint

■ Provide information to the Part C Office promptly

- Helps ensure that federal and state laws and regulations requiring a determination about the Administrative Complaint be made in 60 calendar days are met.

■ Have documentation organized

- All information related to the child available for review

Document all conversations and meetings

- Ensure that the documentation reflects the content of the discussions, decisions, and action steps (if appropriate).
- Be sure the documentation is dated and signed.



Individual Child Complaints

Mediation (alone or simultaneous with
due process hearing), or
Due Process Hearing



Individual Child Complaints

- Involves a parent-provider disagreement related to:
 - identification, evaluation, placement of the child or
 - provision of services to the child and family.
- A parent files an individual child complaint.
- Examples of individual child complaints include, but are not limited to, the following:
 - The parent disagrees with the evaluation team's determination that the child is not eligible under Part C.
 - The parent believes physical therapy is needed, but the rest of the IFSP team believes the child's IFSP outcomes can be met without physical therapy.



What is Mediation?

- Voluntary, confidential, informal meeting
 - Facilitated by an individual trained in IDEA, Part B, Part C. Also certified by the Supreme Court of Virginia—mediator
 - Facilitates discussion,
 - Encourages parties to identify and clarify areas of agreement and disagreement
 - Helps them to generate and evaluate options for resolution that will be mutually agreeable in a process.
 - DOES NOT make decisions for parties, supports thinking and search for solutions
 - The solutions will be put into writing (Mediation Agreement) and signed by both parties

Request Comes In, What Happens Next?



Part C Office:

- Receives the "Request for Dispute Resolution"
- Logs in, assigns a number to the "Request for Dispute Resolution" (M#____)
- Contacts Family
 - Availability of Due Process
- Assigns Mediator
- Acknowledges receipt of the "Request for Dispute Resolution" to all parties
- Determines with locality, need for interpreter



Mediator responsibilities during Mediation



Part C Office responsibilities during and after Mediation

Receipt of a “Request for Dispute Resolution”

- Refer to Handout
- Contains:
 - A statement of the violation that has occurred;
 - A statement of the facts on which the complaint is based;
 - A statement of what needs to occur to resolve the dispute
- Needs to be completed in as much detail as possible
- Need a signature on file



Availability of Mediation

- Families have the right to request mediation to occur simultaneously with a due process hearing.
 - If requested:
 - Mediation occurs prior to the Due Process Hearing
 - If resolved during Mediation, Due Process Hearing will be withdrawn
 - Mediation can not extend the timeline for completion of a Due Process Hearing (30 calendar days)
 - Families are informed of any free or low cost legal services



Appointment of a Mediator

- Appointed within five (5) calendar days of the Lead Agency's receipt of the request for Mediation
- Part C Office provides Mediator:
 - Copy of all information related to the request for Mediation
 - Information related to IDEA, Virginia Policies and Procedures, OSEP Policy Letters that relate to the request for mediation
- Offer of Technical Assistance related to IDEA and Virginia Policies and Procedures

Acknowledgement of Receipt of the “Request for Dispute Resolution”



The Part C Office sends a letter

- To all parties involved
- Informs families of their right to request a Due Process Hearing
- Includes a statement of the alleged violation
- Request that all parties notify the Part C Office whether they agree to participate in mediation
 - Either party may decline
 - If Local System declines, families must be notified within 4 calendar days of decision and right to pursue due process
- Date mediation must be completed (15-calendar days)
- Offer of Technical Assistance in understanding the Mediation Process



Role of Part C Office

- Technical Assistance to:
 - Mediator: IDEA, Virginia's Policies and Procedures related to alleged violations
 - Families: Understanding the Mediation Process
 - Localities: Understanding the Mediation Process
 - Technical Assistance can not be provided on the issue(s) being mediated
- Monitoring of:
 - Implementation of the Mediation Agreement
- The Part C Office **does not** participate in the mediation process or the development of the Mediation Agreement



Role of the Mediator

- Contacts all parties to discuss, at a minimum:
 - Mediation process, including the non-adversarial nature of the process;
 - Voluntary nature of mediation
 - Allows for either party to withdraw from mediation
 - Mediation cannot be used to deny or delay parent's rights to Due Process Hearing or other rights under Part C
 - Parent's rights to request an impartial hearing
 - at any time during the process
 - or if an agreement can not be reached
 - Parent's right to file an Administrative Complaint at any time
 - Date, location and time for mediation conference
 - Need for interpreter, translator or alternate mode of communication

Mediation Conference: What Happens During?

- Conference is:
 - Individual and geared toward the needs of parties involved
- The following outlines a general process
 - Introduction
 - Confidentiality Agreement
 - Fact Finding
 - Clarifying
 - Generating Solutions
 - Results of Mediation
 - Full Agreement
 - Partial Agreement
 - Non Agreement

Mediation Conference: What Happens After?

- If no agreement was reached, parents must be again informed in writing of the right to a hearing by the Lead Agency.
- Participants will be asked to completed an evaluation form of the mediation process and mediator
- Mediator mails a copy of the Agreement/Partial Agreement or letter certifying that no agreement was reached to the Part C Office
- Information filed with initial request for mediation
- Part C Office provides follow-up Technical Assistance to the locality involved in the mediation to ensure the Mediation Agreement is implemented.
- Part C Office reviews implementation of the Mediation Agreement --statewide monitoring/supervision procedures



No Losers in Mediation



*Tips For All
Parties
Involved In
Mediation*

Tips For All Parties Involved In Mediation

■ Separate the people and the issues

- “bottom line”: what is best for the child
- Do not personalize statements made by other side

■ Clear your schedule.

- Don't know how long mediation will last; do not want to be interrupted

■ Documents are not necessary

- Have them organized for easy access

■ Listen carefully to the other side

- Often give clues about how to solve the problem

■ Review these documents:

Notice of Child and Family Rights in the Infant & Toddler Connection of Virginia Part C Early Intervention System

Strengthening Partnerships: A Guide to Family Rights in the Infant & Toddler Connection of Virginia Part C Early Intervention System

3 CFR Part 303, Early Intervention Program for Infants and Toddlers with Disabilities (Part C of the Individuals with Disabilities Education Act) 303.510-512

More Tips For All Parties Involved In Mediation

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- 
- Identify issues/concerns and facts that apply to them
 - List several solutions you feel may resolve the issue
 - Consider ALL possible solutions
 - Create options for mutual gain
 - Avoid becoming committed to a single option
 - Keep interests (feeling/concern) separate from positions (point of view/attitude)
 - Be specific about what you want as a result of mediation
 - “I want...” MUST be followed by “because”
 - “Because” well stated issues and supported factual evidence
 - Measure proposed agreement against best/worst alternatives
 - Understand the costs of each




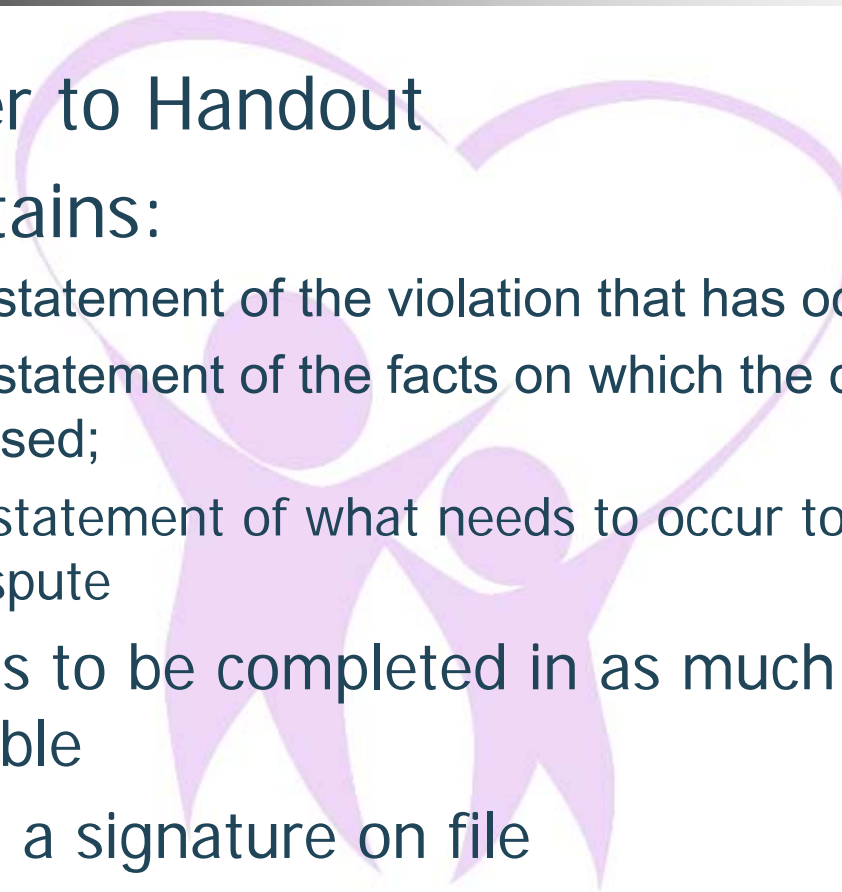
What is Due Process?

- Formal proceeding, resembles a trial
 - Differences are heard in front of a qualified impartial hearing officer
 - Witnesses, evidence and arguments to support positions presented
 - Hearing Officer's role:
 - Make a reasonable decision based on the information presented from both the family and provider
 - The decision is final and binding

Request Comes In, What Happens Next?

- Part C Office:
 - Receives the “Request for Dispute Resolution”
 - Logs in, assigns a number to the “Request for Dispute Resolution” (DP# ____)
 - Contacts family
 - Availability of Mediation
 - Acknowledges receipt of the “Request for Dispute Resolution” to all parties
 - Arranges for appointment of Due Process Hearing
 - If necessary, appoints a mediator
 - Determines with locality, need for interpreter
 - Follows-Up on ruling
- Due Process Hearing

Receipt of a “Request for Dispute Resolution”

- 
- 
- Refer to Handout
 - Contains:
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Availability of Mediation

- Families have the right to request mediation to occur simultaneously with a due process hearing.
 - If requested:
 - Mediation occurs prior to the Due Process Hearing
 - If resolved during Mediation, Due Process Hearing will be withdrawn
 - Mediation can not extend the timeline for completion of a Due Process Hearing (30 calendar days)
 - Families are informed of any free or low cost legal services

Acknowledgement of Receipt of the “Request for Dispute Resolution”



The Part C Office sends a letter

- To all parties involved in the request for Due Process Hearing
 - Also indicates if family has requested Mediation
- Includes a statement of the alleged violation
- Request that all parties notify the Part C Office whether they agree to participate in mediation
- Date Due Process Hearing must be completed (30-calendar days)
- If Mediation requested, date must be completed (15-calendar days)
- Offer of Technical Assistance in understanding Mediation and Due Process Hearing Processes.



Arranging for Due Process Hearing Officer



The Part C Office:

- Contacts the Supreme Court of Virginia
 - On rotational basis, the Supreme Court of Virginia assigns a Hearing Officer
- Provides Due Process Hearing Officer:
 - Copy of all information related to the request for Due Process
 - Information related to IDEA, Virginia Policies and Procedures, OSEP Policy Letters that relate to the request for Due Process
 - Offer of Technical Assistance related to IDEA and Virginia Policies and Procedures and/or OSEP Policy Letters
 - Information about request for mediation if appropriate
- Arranges for Mediator, if appropriate



The Due Process Hearing



Hearing Officers



Who are they?

- Not employees of any agency/entity involved in the provision of early intervention services
- Does not have a personal or professional interest that would conflict with objectivity in implementing the process
- A person who qualifies to be a Hearing Officers but is not an employee of an agency solely because the person is paid by the agency to implement the disagreement resolution process (34CFR 303.431(b))



What are their responsibilities?

- Listen to the arguments about the complaints from both parties
- Examine all information relevant to the issues
- Seek to reach a timely resolution of the decision
- Provide a record of the proceedings, including a written decision (34 CFR 303.421(a))

Family Rights

Due Process Hearing



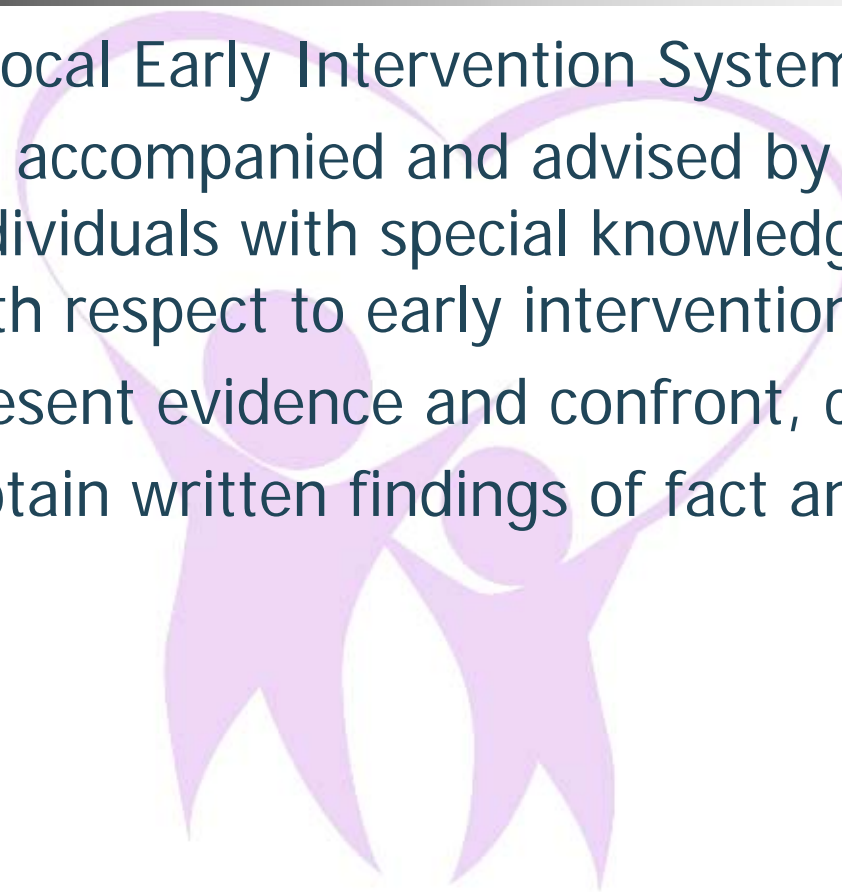
Family Rights include:

- *Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services*
- *Present evidence and confront, cross-examine, and to compel the attendance of witnesses;*
- *Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding; and*
- *Obtain a written or electronic verbatim transcription of the proceeding; and*
- *Obtain written findings of fact and decisions*

(34 CFR 303.422)



Local System

- The Local Early Intervention System is able to:
 - Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services
 - Present evidence and confront, cross-examine;
 - Obtain written findings of fact and decisions
- 



Role of Part C Office

- Technical Assistance to:
 - Due Process Hearing Officer: IDEA, Virginia's Policies and Procedures, OSEP Policy Letters related to alleged violations
 - Mediator: IDEA, Virginia's Policies and Procedures, OSEP Policy Letters related to alleged violations
 - Families: Understanding the Due Process/Mediation Process
 - Localities: Understanding the Due Process/Mediation Process
 - Technical Assistance can not be provided on the issue(s) being heard in the Due Process or being mediated
- Monitoring of:
 - Implementation of the Due Process Ruling and/or Mediation Agreement
- The Part C Office **does not** participate in either the Due Process Hearing or Mediation process or the development of the Mediation Agreement



***Tips For All
Parties
Involved in A
Due Process
Hearing***



Tips For All Parties Involved In A Due Process Hearing

- Review these documents:
 - Notice of Child and Family Rights in the Infant & Toddler Connection of Virginia Part C Early Intervention System
 - Strengthening Partnerships: A Guide to Family Rights in the Infant & Toddler Connection of Virginia Part C Early Intervention System
 - 34 CFR Part 303, Early Intervention Program for Infants and Toddlers with Disabilities (Part C of the Individuals with Disabilities Education Act) 303.510-512
- Keep the issues simple
- Decisions are made regarding current and future service related issues
 - Past information may be important but
 - Need to show what is not working currently
- Keep to the “main points”
 - Don’t clutter with weak arguments
 - Present evidence only on the central issues of the case

More Tips For All Parties Involved In A Due Process Hearing

- 
- 
- Prepare documentation in logical, sequential order
 - Chronological better than categorical, with most recent on top
 - IFSP in dispute should be first “exhibit”
 - Omit irrelevant and/or borderline evidence
 - Old, out-of date documents and duplicate information
 - Witnesses: credible
 - Other than “expert” witnesses, who will testify?
 - Collect all evidence prior to hearing
 - Ensure it is complete and current
 - Watch hearing officer closely
 - Via questions, statements provides guidance on what considered relevant, leanings
 - Try to settle before the hearing
 - No such thing as a guaranteed victory



Commonly Asked Questions About Dispute Resolutions

I Don't Like the Solutions to My Dispute: What Can I Do?

■ Administrative Complaint

- File a request for Mediation and/or Due Process
- File a civil action in state or federal court

■ Mediation

- File a request for Administrative Complaint or Due Process
- File a civil action in state or federal court

■ Due Process

- File a civil action in state or federal court

What Happens to My Child If I File a Request for Dispute Resolution?

- Evaluation results to determine eligibility for Part C
 - The child is not able to receive any Part C services until the issue of eligibility is resolved
- Recommended services for my initial IFSP
 - Services not in dispute will be provided
 - Services in dispute provided only following resolution of the dispute
- Recommended services at an IFSP Review or Annual IFSP
 - Service not in dispute will be provided.
 - Frequency– provision will remain at current level until there is a resolution to the dispute



Costs for Dispute Resolution

- Is there a cost for filing an Administrative Complaint?
 - No.
- Is there a cost for Mediation?
 - Yes. The Part C Office bears the full responsibility of the cost.
- Is there a cost for Due Process?
 - Yes. Families bear the cost of their attorney' fees, witnesses called by the attorney, independent evaluations NOT ordered by the hearing officer
 - The Part C Office and Local Lead Agency equally share the cost.



Costs for Dispute Resolution (Cont.)

- Shared Due Process Costs (cont.)
 - Costs include:
 - Hearing Officer expenses (i.e., time, travel, secretarial, postal and telephone expenses),
 - Expenses incurred by order of the hearing officer (i.e., independent educational evaluations, deposition or transcript),
 - Expenses for making a record of a hearing (i.e., hearing tapes).
 - The State Lead Agency is not liable to the Local Lead Agency for expenses incurred for witnesses (except where the hearing officer subpoenas witnesses on his own initiative) or for attorney's fees.
 - Part C funds may not be used to pay attorney's fees associated with due process actions under Part C

Can A Complaint Be Withdrawn after filing with the Part C Office?


- Yes.
- Parent/complainant calls/writes the Part C Offices to request the complaint be withdrawn
 - Handled via Administrative Complaint or Mediation
 - Parent and agency/provider named in complaint receive form to review and sign to indicate withdrawal of the complaint
 - Subject to Due Process
 - Hearing Officer renders an order stating request has been revoked

Can Part C Office Offer Parents Any Kind Of Help In Filing A Complaint?

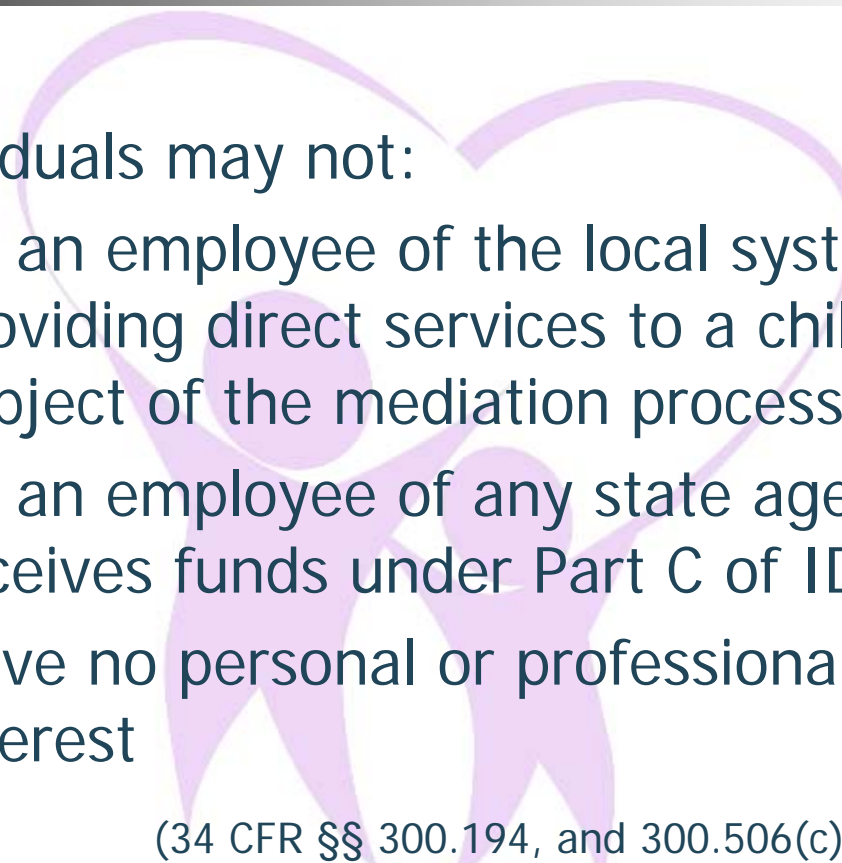
- Yes.
- Helping parents put their verbal complaint into writing
- Linking parents with other language interpreters
- Informing parents of individuals and organizations who provide free or low-cost legal assistance.

Can An Administrative Complaint Be Filed if A Request For Due Process Has Been Filed?


- Yes.
- Any issues in the complaint that are being addressed in the Due Process Hearing must be set aside until after the hearing
- Other issues not part of the Due Process request are handled within the 60-calendar day timeline



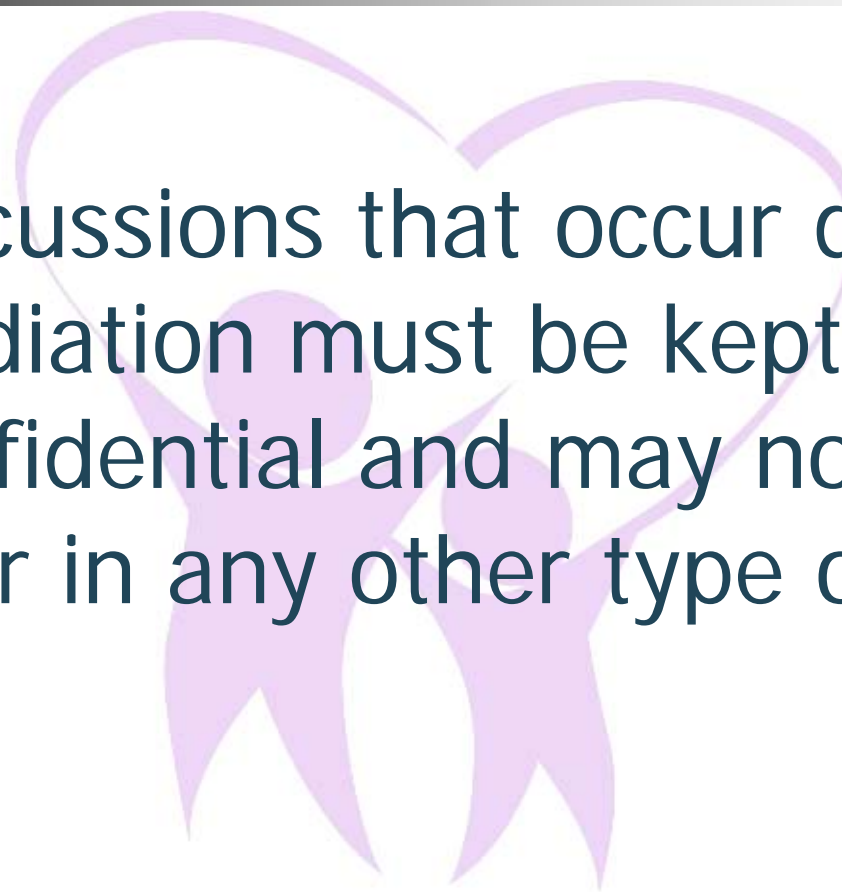
Can Someone Who Works in Part C Who Is Trained As a Mediator, Provide Part C Mediation Services to Localities Other Than the One They Work in?

- 
- No.
 - Individuals may not:
 - Be an employee of the local system that is providing direct services to a child who is the subject of the mediation process
 - Be an employee of any state agency that receives funds under Part C of IDEA
 - Have no personal or professional conflict of interest

(34 CFR §§ 300.194, and 300.506(c)(1)(i)(A).)



Can Discussions That Happen During Mediation Later Be Used As Evidence at a Due Process Hearing or Any Subsequent Civil Proceeding?

- No
 - Discussions that occur during mediation must be kept confidential and may not be used later in any other type of hearing
- 

What Happens If Someone Had A Complaint That the Due Process Hearing Decision Was Not Properly Being Implemented?

- File an Administrative Complaint with the Part C Office

(34 CFR 303.512.©(3))



Other Questions?



Request for Additional Information

- For more information contact:

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