Compliance vs. Complaint.....
You Decide

Creating Connections: Navigating Toward Success
2006 Early Intervention Conference
Roanoke, Virginia
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Purpose of Presentation

Provide:
- Overview of three formal dispute resolution mechanisms
- “Tips” for both providers and families
- Generic documentation “tips”

Answer 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:

- 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.
Administrative Complaints (cont.)

- Who can file an administrative complaint?
  - Individual (including parent or organization)

- Is there a time limit?
  - Complaints will be investigated:
    - One (1) year following 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;
    - Three (3) years following to the date complaint is received by the Part C Office
      - if there is a request for reimbursement.
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
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
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”
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

The Part C Office investigation:

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

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
Role of the Family and Provider During An Administrative Complaint

- Provide additional information to the Part C office at any time during the investigation, if appropriate
- Have records available, if requested
- Participate in interviews, if requested
- Provide information in timely manner
Findings Report

- A written decision based on facts and applicable law.
  - **Binding** document that:
    - Outlines each alleged violation;
    - States the findings of facts related to the violations;
    - States the conclusion reached;
      - “Founded” or “Unfounded”
    - Outlines the reasons for the final decision;
    - Outlines the procedures for implementation of the final decision.
      - Technical Assistance
      - Negotiations
      - Corrective Action Plans
What Happens After An Administrative Complaint?

- Locality implements the actions outlined within the “Findings Report”
  - May include, but not limited to:
    - Development of Corrective Action Plan(s) to remediate the violation
    - Technical Assistance and/or training
    - Compensatory services to family
    - Quarterly record and/or utilization reviews
    - Reimbursement to insurance companies
    - Required training to providers to enhance knowledge of Part C supports and services

- Part C Office reviews the implementation of the “Findings Report” as part of its general supervision and monitoring
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
  - Contact TA for assistance with resolution if appropriate
- Gather/organize the information needed 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
- 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
  - 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:

- Follows similar procedures as in the Administrative Complaint.
  - Assigning a Number
  - Contacting family about the availability of Due Process
  - Acknowledging receipt of Request for Mediation, etc.
- Appoints Mediator
  - 5 calendar days of receipt of request for Mediation
Appointment of a Mediator

- 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
Participants in Mediation

- Family Member(s)
- Advocate for family (if requested by family)
  - Available to answer questions for family; not an active participant of Mediation
- Mediator
- Part C Personnel
  - At least one individual has to have decision making authority
- Lawyers are not permitted
Role of Part C Office in Mediation

Technical Assistance to:
- **Mediator**: IDEIA, Virginia’s Policies and Procedures related to alleged violations
- **Families**: Understanding the Mediation Process
- **Localities**: Understanding the Mediation Process

Monitoring of:
- Implementation of the Mediation Agreement
- Technical Assistance **cannot** be provided on the issue(s) being mediated
- 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
Role of the Family and Provider During Mediation

- **Listen with an open mind**
  - Gain a complete understanding of the issue(s)
  - Often solutions are presented that are amenable to all parties

- **Work in partnership with each other for the best interest of the child**
  - Agreement reached should reflect best ideas/solutions that are practical and reasonable
  - Agreement reached build on existing child and family strengths and interests and assist the family in achieving outcomes that make a meaningful difference in the life of their child and family.
Mediation Conference: What Happens During It?

- Conference is:
  - Individual and geared toward the needs of parties involved

- The following outlines a general process
  - Introduction
    - Confidentiality Agreement
    - Ground Rules
  - Fact Finding
  - Clarifying
  - Generating Solutions
  - Results of Mediation
    - Full Agreement
    - Partial Agreement
    - Non Agreement
Mediation Conference: What Happens After?

- No agreement reached:
  - Parents informed in writing right to a hearing by Lead Agency.
  - Participants evaluate 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
  - Technical Assistance provided to the locality to ensure the Mediation Agreement is implemented.
- Oversight of implementation of the Mediation Agreement –
  - Part C office -- 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
- 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
  - 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

- 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:

- Follows similar procedures as in the Administrative Complaint.
  - Assigning a Number
  - Contacting family about the availability of Due Process
  - Acknowledging receipt of Request for Due Process, etc.

- Contacts Supreme Court of Virginia for Appointment of a Due Process Hearing Officer
  - 5 calendar days of receipt of request for Due Process

- Hearing conducted within 30 calendar days from receipt of request for Due Process
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 (15 calendar days)
  - If resolved during Mediation, Due Process Hearing will be withdrawn
  - Mediation cannot extend the timeline for completing Due Process Hearing (30 calendar days)
Request Comes In, What Happens Next?

The Part C Office:

- Contacts the Supreme Court of Virginia
  - On rotational basis, a Hearing Officer is assigned.
- Provides Due Process Hearing Officer:
  - Copy of all information related to the request for Due Process
  - Information related to IDEIA, Virginia Policies and Procedures, OSEP Policy Letters that relate to the request for Due Process
  - Offer of Technical Assistance related to IDEIA and Virginia Policies and Procedures and/or OSEP Policy Letters
  - Information about request for mediation if appropriate
- Arranges for Mediator, if appropriate
- Provides families with information of any free or low cost legal services
Hearing Officers

Who are they?

- Not employees of any agency/entity involved in the provision of early intervention services
- No one with 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))
Hearing Officers

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))
Participants in Due Process Hearing

- Hearing Officer
- Family Member(s)
- Advocate (if requested by family)
- Family Lawyer
- Part C Personnel
  - Most likely Local Lead Agency Representative
  - Local System Manager
- Lawyer for the Part C system
- Witnesses for both parties, if appropriate
- Experts for both parties, if appropriate
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: IDEIA, Virginia’s Policies and Procedures, OSEP Policy Letters related to alleged violations
- Mediator: IDEIA, 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

Monitoring of:
- Implementation of the Due Process Ruling and/or Mediation Agreement
- Technical Assistance can not be provided on the issue(s) being heard in the Due Process

The Part C Office does not participate in either the Due Process Hearing
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
  - 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
Documentation, Why the hubbub?

If it isn’t documented it didn’t happen!
Importance of Documentation in Dispute Resolution

**CRITICAL**

Documentation is:
- Means of communication with providers and family
- Blueprint for Service Coordination
- Chronology of child and family’s participation in Part C
- Billing Documents
- Monitoring Document

**Legal Documents**

- Used in any form of Dispute Resolution
- Can be subpoenaed as part of other legal investigations
Importance of Documentation in Dispute Resolution

Things to Consider: *(this is not an exhaustive list)*

- Include child’s name on note
- Date of note
- Type/Method of Contact
  - Phone Call, Voice Message, E-mail, Face-to-Face, etc
- Description of what Occurred
- Signature and Title
Importance of Documentation in Dispute Resolution

**Documentation:** (this is not an exhaustive list)
- Record events in factual, non-judgmental way
- Avoid subjective statements
- Use positive statements
- Complete in timely manner
- Write legibly!!
Pitfalls To Avoid In Documentation

- Record lacks documentation of phone calls with families
  - Cancellations, No Shows
  - Attempts to call families, actual conversations

- Use of “white-out” to correct mistakes
  - Draw a single line through error, date, initial and continue with documentation

- Use of brightly colored ink
  - Be consistent with one color (blue, black)
  - Black copies best
Pitfalls To Avoid In Documentation

“Sketchy” information about what occurred during any contact with provider, family (phone call, visit, etc)
- Contain essential information for reader to know what occurred, progress, actions, plans, etc.

Lacks link to Outcomes
- Address outcomes listed on IFSP; not what “feels good today”

Release of Information
- Ensure current before sending out to provider/agency
Pitfalls To Avoid In Documentation

- Inconsistent/Inaccurate information in IFSP
  - Child’s Name and DOB is the SAME on all pages of the document
  - Auditory Verbal Therapy/ABA are NOT Part C Services-methodology.
    - Speech/Language Pathology, Audiology or Special Instruction
- Lack of documentation of reasons services are not provided in NE;
  - Transition plan back to NE
- Inconsistent completion of Transition Page
  - Transition planning occurs at all IFSP review meetings
- Lack of Service Coordination Outcomes
- Exceeding IFSP Review Timelines
  - At least 6 months; 365 days from initial IFSP
Pitfalls To Avoid In Documentation

- Procedural Safeguard Forms
  - Complete Correctly
    - 5-day box
    - Reason action being proposed on *Parental Prior Notice* form
    - Date of referral on the *Notice and Consent for Initial Evaluation* matches the date in the child’s record
Questions

Also

See Handouts
Request for Additional Information

For more information contact:

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