



Compliance vs. Complaint.... You Decide

Creating Connections: Navigating Toward
Success

2006 Early Intervention Conference

Roanoke, Virginia

April 25, 2006

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 IDEIA, 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.




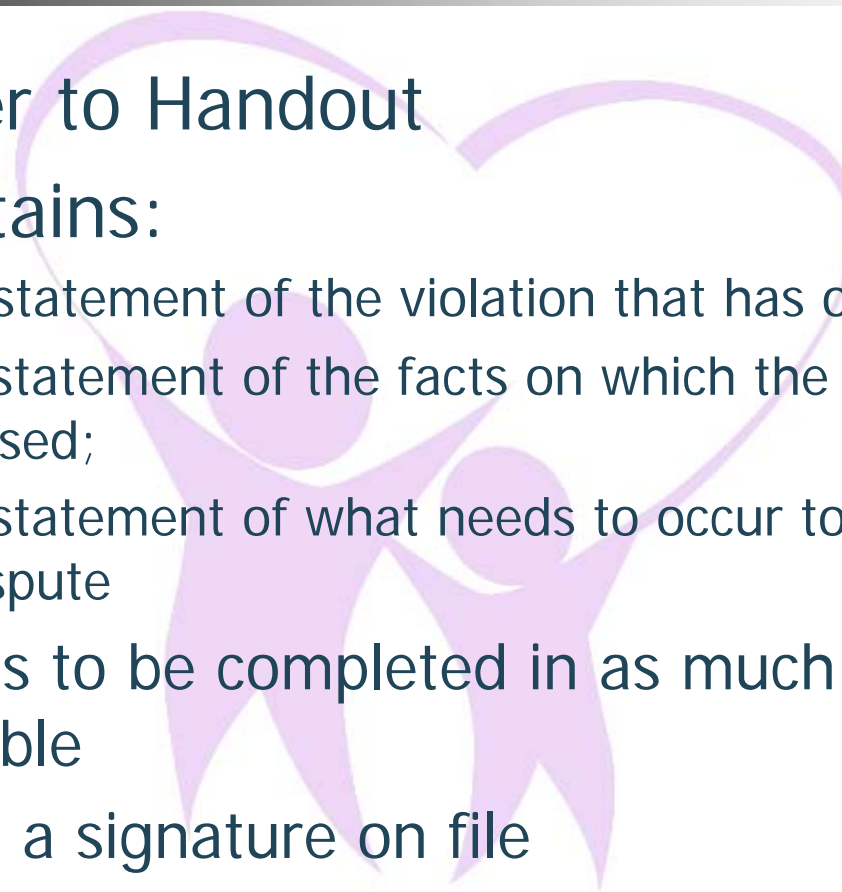
Administrative Complaints (cont.)

- 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

- 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”

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- 
- 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)

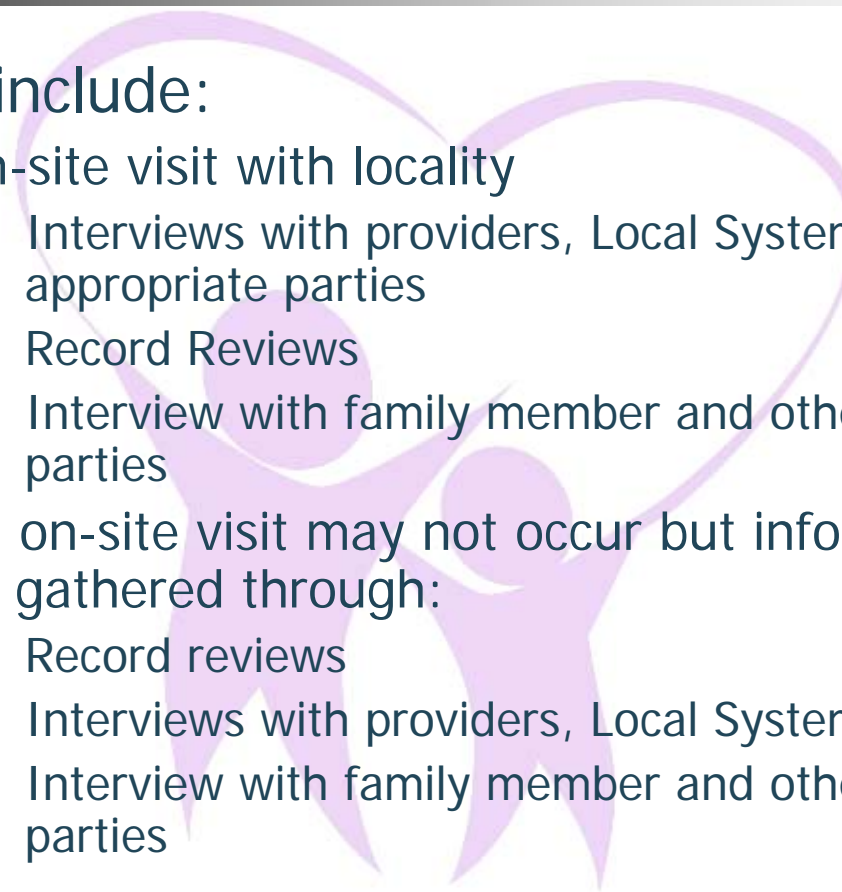


The Investigation

- 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;

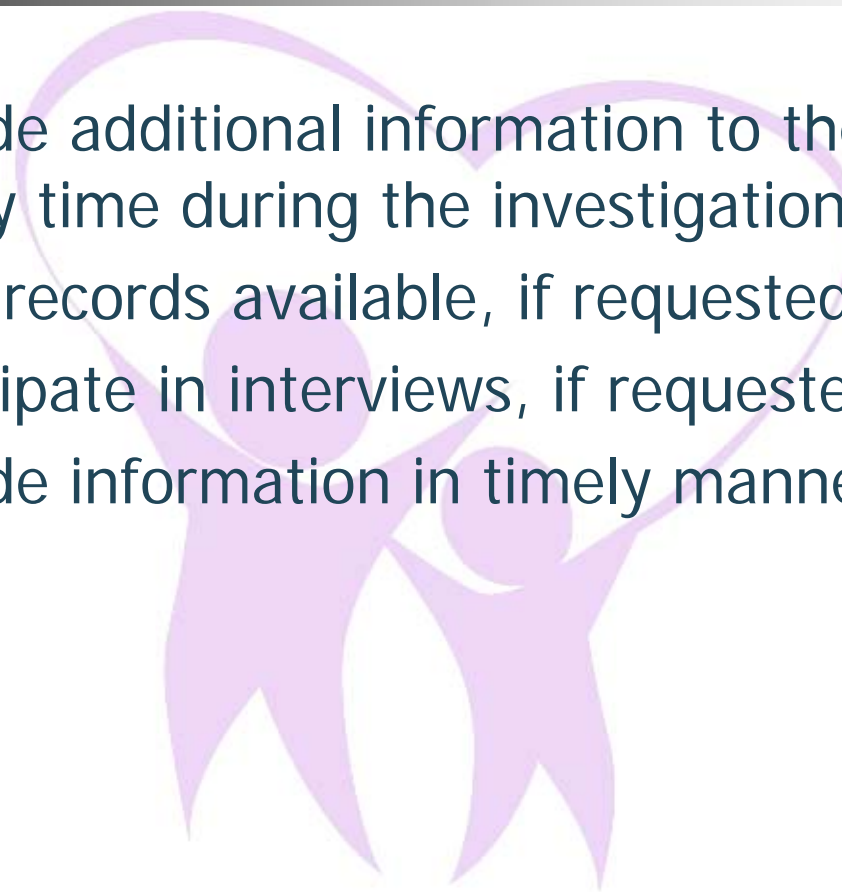


The Investigation

- 
- 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

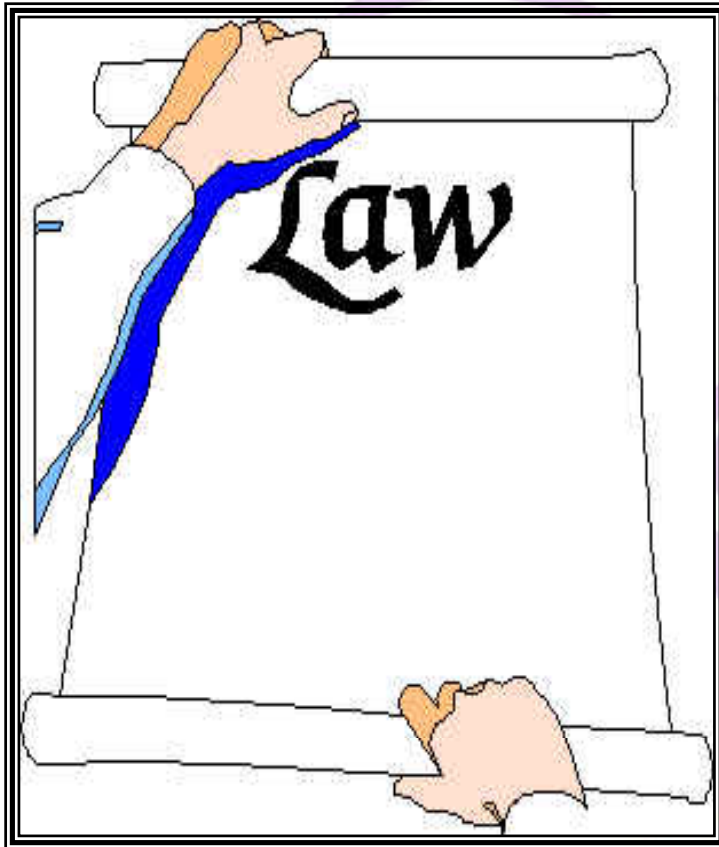


Findings Report

- 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 agreement 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](#)
 - [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 IDEIA, 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

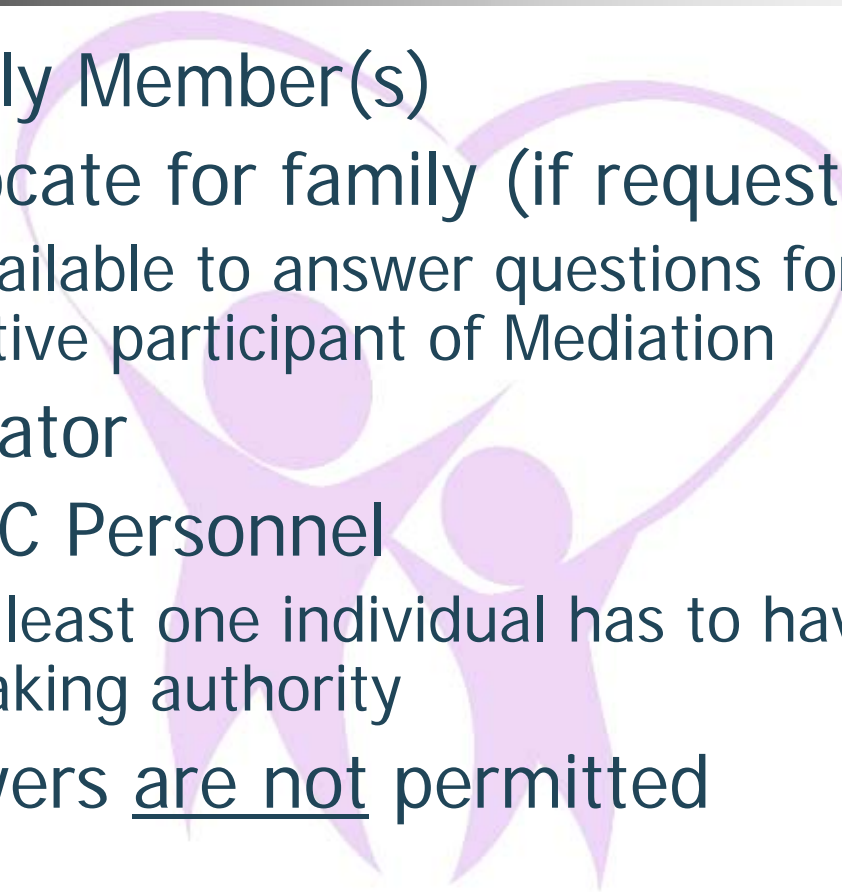


Appointment of a Mediator

- Part C Office provides Mediator:
 - Copy of all information related to the request for Mediation
 - Information related to IDEIA, Virginia Policies and Procedures, OSEP Policy Letters that relate to the request for mediation
- Offer of Technical Assistance related to IDEIA 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 can not 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
 - 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

- 
- 
- 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 can not 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

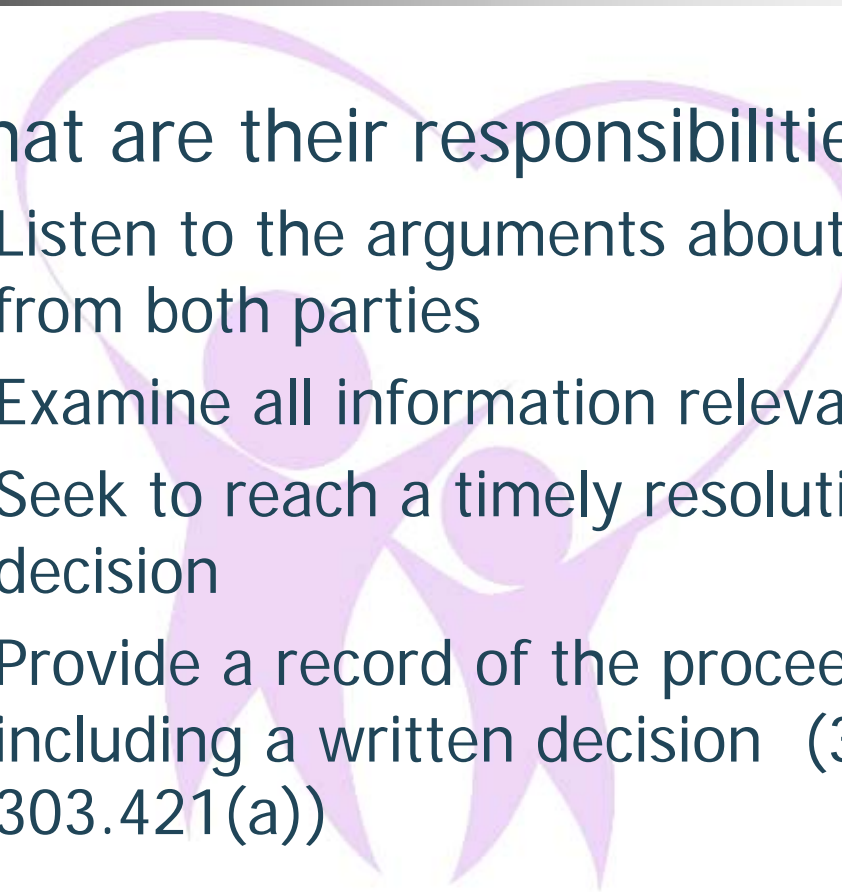


Who are they?

- 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))

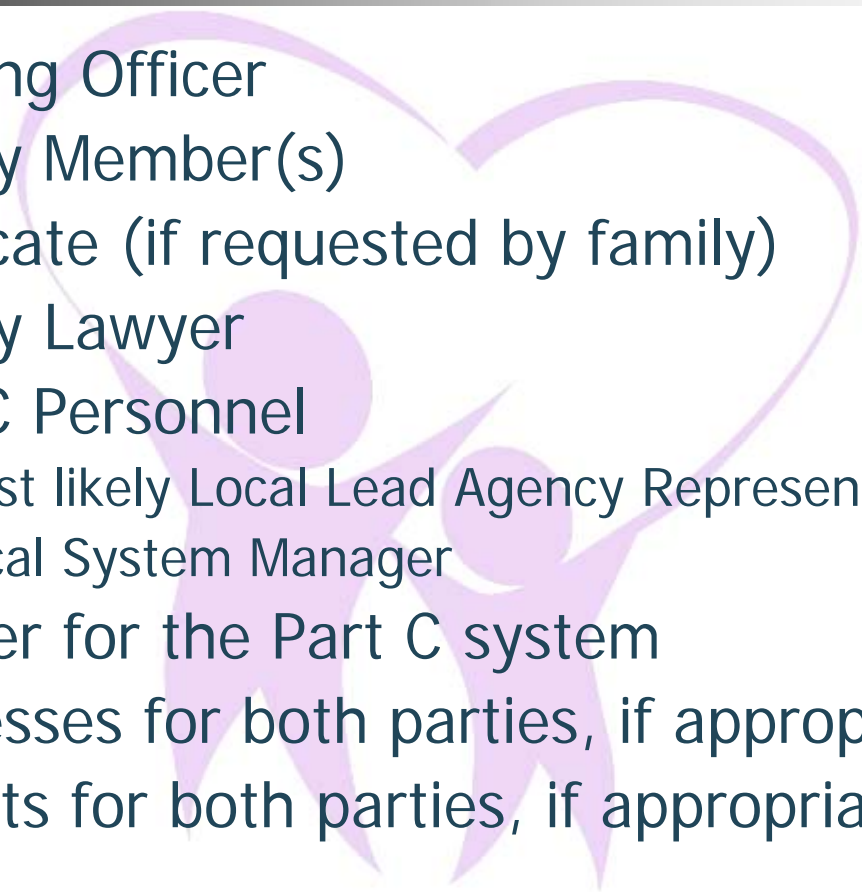


Hearing Officers

- 
- 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



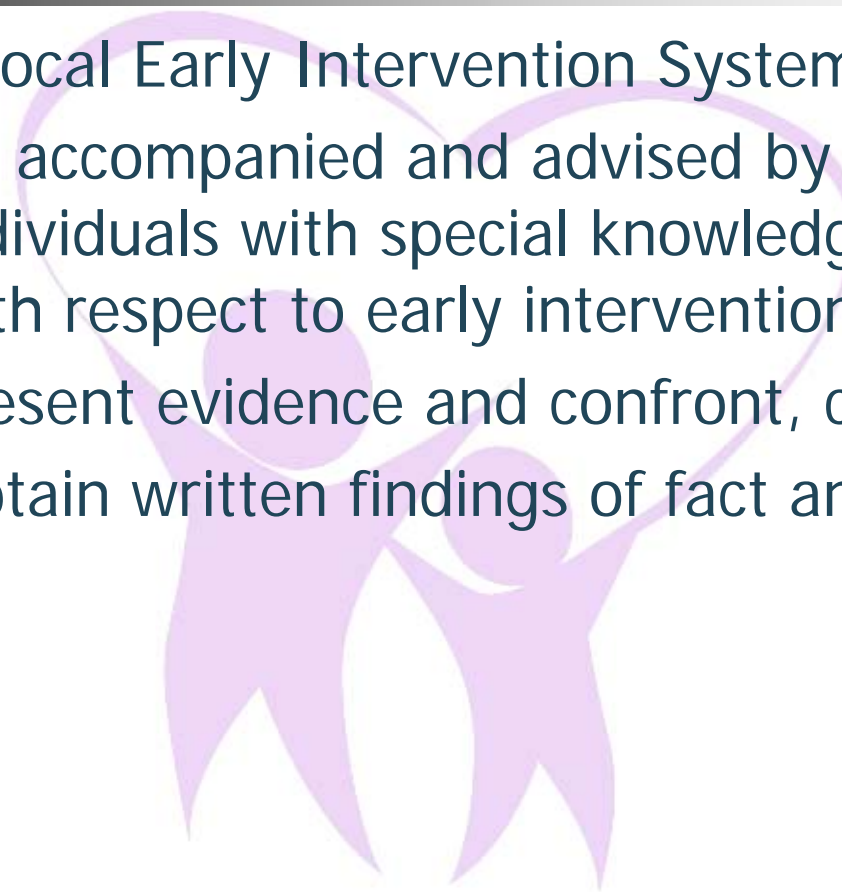
Family Rights include:

- *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
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■ 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-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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.gov

