

# North Carolina Infant-Toddler Program Policy

## *Dispute Resolution*

### **Introduction**

The Infant-Toddler Program (ITP) shall ensure the timely administrative resolution of complaints through mediation, state complaint, and due process hearing procedures.

### **Mediation**

1. The ITP shall ensure mediation procedures are implemented to allow parties to disputes involving any matter under Part C program policies, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time. Procedures must ensure that the mediation process:
  - a. is voluntary on the part of the parties;
  - b. is not used to deny or delay a parent's right to a due process hearing, or to deny any other right afforded under Part C; and
  - c. is conducted by a qualified and impartial mediator who is trained in effective mediation techniques and knowledgeable in laws and regulations relating to the provision of early intervention services.
2. The ITP shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services. The ITP shall select mediators on a random, rotational, or other impartial basis. A person who serves as a mediator may not be an employee of the ITP, be a service provider for the child, or have a personal or professional interest that conflicts with his or her objectivity.
3. The ITP shall bear the cost of the mediation process, including the costs of meetings described in paragraph 6 of this section.
4. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
5. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:
  - a. all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under Part C;
  - b. a written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States; and
  - c. is signed by both the parent and a representative of the Early Intervention Section state office

who has the authority to bind such agency.

6. The State shall offer to parents and EIS providers that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party to explain the benefits and encourage the use of mediation.

### **State Complaint**

The ITP shall ensure procedures are implemented for resolving any complaints filed by an individual or an organization (including from another state) that alleges that an agency of the state, a local agency, or an individual practitioner has violated a federal or state Part C requirement. The ITP shall also widely disseminate to parents and other interested individuals, the procedures for filing a complaint.

1. The complaint must be in writing, signed and include a statement of the alleged violation and the facts on which the complaint is based. The complaint is addressed to the Early Intervention Section, Part C Director, Division of Child and Family Well-Being, 1916 Mail Service Center, Raleigh, NC 27699-1916. Telephone: (919) 707-5520.
2. The complaint must be resolved within sixty (60) calendar days from the receipt of a signed written complaint by the Early Intervention Section of the Division of Child and Family Well-Being. Within the sixty days, the Early Intervention Section state office shall:
  - a. carry out an independent on-site investigation if it is determined that an investigation is necessary;
  - b. give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
  - c. provide CDSA staff, agency, or other EIS provider with an opportunity to respond to the complaint, including, at a minimum:
    - i. a proposal to resolve the complaint, at the discretion of the Early Intervention Section state office; and
    - ii. an opportunity for a parent who has filed a complaint and the CDSA staff, agency, or other EIS provider to voluntarily engage in mediation, consistent with the procedures above.
  - d. review all relevant information and make an independent determination as to whether the CDSA staff, agency, or other EIS provider is violating a requirement of Part C; and
  - e. issue a written decision to the complainant that addresses each allegation in the complaint and contains:
    - i. findings of fact and conclusions;
    - ii. the reasons for the final decision; and
    - iii. procedures for effective implementation of the final decision, if needed, including:
      - a) technical assistance activities;
      - b) negotiations; and
      - c) corrective actions to achieve compliance.

- b. The Early Intervention Section state office shall permit an extension of the time limit only if:
  - i. Exceptional circumstances exist with respect to a particular complaint; or
  - ii. The parent (or individual or organization, if mediation is available to the individual or organization under State procedures) and the CDSA, agency or other EIS provider involved agree to voluntarily engage in mediation.
3. If a written complaint is received that is also the subject of a due process hearing or contains multiple issues of which one or more are part of that hearing, the Early Intervention Section state office 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 the due process hearing must be resolved using the time limit and procedures described in this section.
4. If an issue raised in a complaint filed has previously been decided in a due process hearing involving the same parties:
  - a. the due process hearing decision is binding on that issue; and
  - b. the Early Intervention Section state office must inform the complainant to that effect.
5. A complaint alleging the ITP, public agency, or EIS provider's failure to implement a due process hearing decision must be resolved by the Early Intervention Section state office.
6. In resolving a complaint in which a failure has been found, the resolution must address:
  - a. the failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and
  - b. appropriate future provision of services for all infants and toddlers with disabilities and their families.
7. An organization or individual may file a signed written complaint under the procedures described above. The written complaint must include:
  - a. a statement that the CDSA staff, agency, or other EIS provider has violated a requirement of Part C;
  - b. the facts on which the statement is based;
  - c. the signature and contact information for the complainant;
  - d. if alleging violations with respect to a specific child:
    - i. the name and address of the residence of the child;
    - ii. the name of the EIS provider(s) serving the child;
    - iii. a description of the nature of the problem, including facts relating to the problem; and
    - iv. a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
8. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

9. The party filing the complaint must forward a copy of the complaint to the CDSA or other EIS provider serving the child at the same time the party files the complaint.

## **Due Process Hearing**

The Early Intervention Section state office shall ensure due process procedures are implemented for resolving any complaints with respect to a particular infant or toddler regarding any matter related to the identification, evaluation, eligibility, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family.

1. Whenever a due process complaint is received, a due process hearing officer must be appointed to implement the complaint resolution process in this subpart. The person must:
  - a. have knowledge about the provisions of Part C and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families;
  - b. perform the following duties:
    - i. listen to the presentation of relevant viewpoints about the due process complaint;
    - ii. examine all information relevant to the issues;
    - iii. seek to reach a timely resolution of the due process complaint; and
    - iv. provide a record of the proceedings, including a written decision;
  - c. be impartial in that the person:
    - i. is not an employee of the ITP or an EIS provider involved in the provision of early intervention services or care of the child; and
    - ii. does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(A person who otherwise qualifies under paragraph (c)(i) of this section is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures.)

2. Any parent involved in a due process hearing has the right to:
  - a. be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for infants and toddlers with disabilities;
  - b. present evidence and confront, cross-examine, and compel the attendance of witnesses;
  - c. prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing;
  - d. obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and
  - e. receive a written copy of the findings of fact and decisions at no cost to the parent.
3. Any due process hearing conducted must be carried out at a time and place that is reasonably convenient to the parents.

4. The Early Intervention Section state office must ensure that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required is completed and a written decision mailed to each of the parties.
5. A hearing officer may grant specific extensions of time beyond the period set out in paragraph 4 of this section at the request of either party.
6. Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in State or Federal court.
7. During the pendency of any proceeding involving a due process complaint, unless the CDSA or other EIS providers and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents. If the due process complaint involves an application for initial services under Part C, the child must receive those services that are not in dispute.