

§ 303.435

34 CFR Ch. III (7-1-12 Edition)

(iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with § 303.432.

(d) The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the lead agency.

(Approved by Office of Management and Budget under control number 1820-NEW)

(Authority: 20 U.S.C. 1439(a)(1))

STATES THAT CHOOSE TO ADOPT THE PART C DUE PROCESS HEARING PROCEDURES UNDER SECTION 639 OF THE ACT

§ 303.435 Appointment of an impartial due process hearing officer.

(a) *Qualifications and duties.* Whenever a due process complaint is received under § 303.430(d), a due process hearing officer must be appointed to implement the complaint resolution process in this subpart. The person must—

(1) Have knowledge about the provisions of this part and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and

(2) Perform the following duties:

(i)(A) Listen to the presentation of relevant viewpoints about the due process complaint.

(B) Examine all information relevant to the issues.

(C) Seek to reach a timely resolution of the due process complaint.

(ii) Provide a record of the proceedings, including a written decision.

(b) *Definition of impartial.* (1) *Impartial* means that the due process hearing officer appointed to implement the due process hearing under this part—

(i) Is not an employee of the lead agency 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.

(2) A person who otherwise qualifies under paragraph (b)(1) 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 under this part.

(Authority: 20 U.S.C. 1439(a)(1))

§ 303.436 Parental rights in due process hearing proceedings.

(a) *General.* Each lead agency must ensure that the parents of a child referred to part C are afforded the rights in paragraph (b) of this section in the due process hearing carried out under § 303.430(d).

(b) *Rights.* Any parent involved in a due process hearing has the right to—

(1) 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;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing;

(4) Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and

(5) Receive a written copy of the findings of fact and decisions at no cost to the parent.

(Authority: 20 U.S.C. 1439(a))

§ 303.437 Convenience of hearings and timelines.

(a) Any due process hearing conducted under this subpart must be carried out at a time and place that is reasonably convenient to the parents.

(b) Each lead agency must ensure that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required under this subpart is completed and a written decision mailed to each of the parties.