

§ 303.423

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;

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

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

(4) Obtain a written or electronic verbatim transcription of the proceeding; and

(5) Obtain written findings of fact and decisions.

(Approved by the Office of Management and Budget under control number 1820-0550)

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

§ 303.423 Convenience of proceedings; timelines.

(a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents.

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

(Approved by the Office of Management and Budget under control number 1820-0550)

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

NOTE: Under part B of the Act, States are allowed 45 days to conduct an impartial due process hearing (i.e., within 45 days after the receipt of a request for a hearing, a decision is reached and a copy of the decision is mailed to each of the parties). (See 34 CFR 300.512.) Thus, if a State, in meeting the requirements of § 303.420, elects to adopt the due process procedures under part B, that State would also have 45 days for hearings. However, any State in that situation is encouraged (but not required) to accelerate the timeline for the due process hearing for children who are eligible under this part—from 45 days to the 30-day timeline in this section. Because the needs of children in the birth-through-two-age range change so rapidly, quick resolution of complaints is important.

§ 303.424 Civil action.

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a

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civil action in State or Federal court under section 639(a)(1) of the Act.

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

[58 FR 40959, July 30, 1993, as amended at 63 FR 18296, Apr. 14, 1998]

§ 303.425 Status of a child during proceedings.

(a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1439(a)(7))

CONFIDENTIALITY

§ 303.460 Confidentiality of information.

(a) Each State shall adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part, including the right of parents to written notice of and written consent to the exchange of this information among agencies consistent with Federal and State law.

(b) These policies and procedures must meet the requirements in 34 CFR 300.560 through 300.576, with the modifications specified in § 303.5(b).

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1439(a)(2), 1442)

NOTE: With the modifications referred to in paragraph (b) of this section, the confidentiality requirements in the regulations implementing part B of the Act (34 CFR 300.560 through 300.576) are to be used by public agencies to meet the confidentiality requirements under part C of the Act and this section (§ 303.460).

The part B provisions incorporate by reference the regulations in 34 CFR part 99 (Family Educational Rights and Privacy); therefore, those regulations also apply to this part.

Subpart F—State Administration

LEAD AGENCY PROCEDURES FOR RESOLVING COMPLAINTS

GENERAL

§ 303.500 Lead agency establishment or designation.

Each system must include a single line of responsibility in a lead agency that—

- (a) Is established or designated by the Governor; and
(b) Is responsible for the administration of the system, in accordance with the requirements of this part.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(10))

§ 303.501 Supervision and monitoring of programs.

(a) General. Each lead agency is responsible for—

- (1) The general administration and supervision of programs and activities receiving assistance under this part; and
(2) The monitoring of programs and activities used by the State to carry out this part, whether or not these programs or activities are receiving assistance under this part, to ensure that the State complies with this part.

(b) Methods of administering programs. In meeting the requirement in paragraph (a) of this section, the lead agency shall adopt and use proper methods of administering each program, including—

- (1) Monitoring agencies, institutions, and organizations used by the State to carry out this part;
(2) Enforcing any obligations imposed on those agencies under part C of the Act and these regulations;
(3) Providing technical assistance, if necessary, to those agencies, institutions, and organizations; and
(4) Correcting deficiencies that are identified through monitoring.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1435(a)(10)(A))

§ 303.510 Adopting complaint procedures.

(a) General. Each lead agency shall adopt written procedures for—

- (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that any public agency or private service provider is violating a requirement of Part C of the Act or this Part by—
(i) Providing for the filing of a complaint with the lead agency; and
(ii) At the lead agency's discretion, providing for the filing of a complaint with a public agency and the right to have the lead agency review the public agency's decision on the complaint; and
(2) Widely disseminating to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under §§ 303.510-303.512.

(b) Remedies for denial of appropriate services. In resolving a complaint in which it finds a failure to provide appropriate services, a lead agency, pursuant to its general supervisory authority under Part C of the Act, must address:

- (1) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and
(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

(Authority: 20 U.S.C. 1435(a)(10))

[64 FR 12536, Mar. 12, 1999]

§ 303.511 An organization or individual may file a complaint.

(a) General. An individual or organization may file a written signed complaint under § 303.510. The complaint must include—

- (1) A statement that the State has violated a requirement of part C of the Act or the regulations in this part; and
(2) The facts on which the complaint is based.