

Resolution of Complaints

Resolution of complaints shall be accomplished by the use of mediation, due process hearing, or both. A parent or an agency providing service shall notify KDHE of a complaint received by a local lead agency leading to mediation, due process hearing, or both.

Programs identified as Part H of IDEA participants, contracted with Kansas Infant-Toddler Services, or associated with a local lead agency, need to assure, either independently or through their local lead agency, that the procedural safeguards are followed and enforced.

A. Mediation

1. General

- a. Mediation shall be offered to parents as an option but shall not delay or extend the 30 day due process procedure.
- b. Mediation proceedings shall be completed or at impasse within 7 calendar days of the local lead agency's receipt of the complaint. If at impasse or the time has elapsed, the complaint shall be forwarded to KDHE within 8 days from the time KDHE was initially notified of the complaint.
- c. Mediation shall be requested by the parent or the agency and must have the agreement of both parties prior to entering into the process.

2. KDHE shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.
3. The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph A2.
4. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.
5. An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.
6. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.
7. The mediator appointed by KDHE shall:
 - a. Have knowledge about the provisions of Part H of IDEA, and the needs of, and services available for, eligible children and their families.
 - b. Have training in the mediation process.
 - c. Not be an employee of any agency or program involved in the direct provision of early intervention services or care of the child, and shall not have a personal or professional interest that would conflict with his or her objectivity in implementing this process.
 - d. Shall be selected by mutual agreement of the parents and local agency.
8. Duties of the mediator
 - a. Listen to presentations of both parties to find out facts and isolate issues.
 - b. Assist in the development of creative alternatives to resolve the complaint.
 - c. Facilitate negotiation and decision making.
 - d. Provide, if resolution occurs, a written record of the proceedings, including the decision or solution, to the participants and to KDHE.

- e. Forward, if no resolution within time limits or impasse occurs, the complaint to KDHE within one day, by telephone, followed by written documentation of the complaint and mediation activities within 2 working days.

9. Parents' rights in mediation

- a. Present their complaint and other relevant information and facts.
- b. Hear the relevant and factual information of the other participants.
- c. Present desired outcome of complaint and alternative ways to achieve the solution.
- d. Explore with other parties possible solutions.
- e. Obtain copy of record proceedings including the solution.
- f. Have the mediation proceedings conducted in their native language at a convenient time and place.

B. Due Process Hearing

Appointment of an Impartial Person [34 CFR 303.421]

- (a) Qualifications and duties. An impartial person shall be appointed by KDHE to implement the complaint resolution process. The person must-

- (1) Have knowledge about the provisions of this part, due process hearings, and the needs of, and services available for, eligible children and their families; and
- (2) Perform the following duties:
 - (i) Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint.
 - (ii) Provide a record of the proceedings, including a written decision to the participant and to KDHE.

- (b) Definition of impartial.

- (1) "Impartial" means that the person appointed to implement the complaint resolution process -
 - (i) Is not an employee of any agency or entity involved in the provision of early intervention services or care of the child; and
 - (ii) Shall not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

- (2) The impartial person shall not be an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

Parent Rights in Administrative Proceedings (303.422)

Any parent involved in an administrative proceeding 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 eligible children;
- (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.

Convenience of Proceedings; Timelines [34 CFR 303.423]

- (a) Any proceeding for implementing the complaint resolution process shall be carried out at a time and place that is reasonably convenient to the parents.
- (b) The impartial proceeding shall be completed and a written decision mailed to each of the parties, no later than 30 days after the receipt of the parent's complaint.

Civil Action [34 CFR 303.424]

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 680(1) of the Act.

Status of a Child During Proceedings [34 CFR 303.425]

- (a) The child shall continue to receive the appropriate early intervention services currently being provided, during the pendency of any proceeding involving a complaint, unless the public agency and parents of a child otherwise agree.
- (b) The child shall receive those services that are not in dispute if the complaint involves an application for initial services.

The due process hearing for complaint resolution shall be the responsibility of the State Lead Agency.

KDHE shall:

- (a) Inform the parents of any free or low-cost legal and other relevant services available upon request of the parent or if the action was initiated by the local agency providing services; and
- (b) Appoint a hearing officer within one working day of notification of mediation impasse or time limitation not met or initial parent request to move directly into a due process hearing.

Mediation, if applicable, and the due process procedures shall be concluded within 30 calendar days of the receipt of the complaint.