

CHAPTER 7: PROCEDURAL SAFEGUARDS

REVISION DATES: 07/01/2021, 12/14/2018

EFFECTIVE DATES: 04/01/2022, 07/01/2019

INTENDED USER(S): All ADES/AzEIP personnel, AzEIP Service Providing Agencies including all employees, contractors, subcontractors, and volunteers.

REFERENCES: 20 U.S.C. §1401(23); 34 C.F.R. Part 99; 34 C.F.R. §303.7, -.27 123, -.400, -.403, and -.449; 34 C.F.R. §99.3, 20 U.S.C. §§1232g, 1439(a)(2), and 1442; 34 C.F.R. §303.401-402, 34 C.F.R. 303.404, 20 U.S.C. §1232, et seq. (FERPA) and 34 C.F.R. §303.405 - 413., 34 C.F.R. §303.405-409, 34 C.F.R. §303.410-411, 34 C.F.R. §303.401(d)(1), -.414-.415; 34 C.F.R. 99.30(d), 34 C.F.R. §303.416; 20 U.S.C. 1232f; 34 C.F.R. Parts 76 and 80, 34 C.F.R. §420, 20 U.S.C. §§1439(a)(6) and (7); 34 C.F.R. §§303.21 and 303.421, 20 U.S.C. §1439(a)(5); 34 C.F.R. §§303.27; -.422, 20 U.S.C. §1439; 34 C.F.R. §§303.401-449, 20 U.S.C. §1415(e); 34 C.F.R. §303.431, 34 C.F.R. §303.438, 34 C.F.R. §§303.430; 435. 34C.F.R. §§303.432-434

7.10 Dispute Resolution

7.10.1 Informal Disputes

7.10.2 When an issue or concern arises, an early resolution may be reached through the informal dispute process which may alleviate the need to file a formal written complaint, mediation, or due process hearing.

- A. All individuals who submit their concerns through the informal dispute process must be advised of their right to file a request for a formal complaint, mediation, or due process hearing at any time.
- B. A parent may at any time, verbally or in writing, informally inform their service coordinator, his/her supervisor, and/or program director about concerns they have regarding services.
- C. Parents and others are encouraged to attempt to resolve disputes by speaking to their service coordinator, his/her supervisor, and/or program director before filing a formal complaint or requesting mediation or a hearing. The service coordinator and EIP shall respond to these concerns in a timely manner and must be available to discuss the situation and determine a resolution.
- D. EIPs must maintain logs to track informal complaints, including how and when it was resolved.

7.10.3 Formal Complaints

- A. Any agency, employee, parent, organization may file a formal written complaint alleging noncompliance with IDEA Part C. ADES/AzEIP will conduct an investigation and within 60 calendar days will issue a written decision to the complainant. If there are exceptional circumstances, an extension shall be agreed upon by both parties and will not exceed an additional 60 calendar days.

- B. The individual or organization filing the complaint must submit a written, signed complaint to ADES/AZEIP or the Part C Coordinator and the local EIP serving the child at the same time.
- C. The written complaint must include:
 - A. a statement that AzEIP, an EIP, or an early intervention services provider has violated a requirement of IDEA, Part C that occurred not more than one (1) year prior to the date that the complaint is received
 - B. the facts on which the statement is based
 - C. the signature and contact information for the person filing the complaint
- D. If the statement alleges a violation about a specific child:
 - A. the name and address of the residence of the child
 - B. the name of the EIP and/or early intervention services provider serving the child
 - C. a description of the nature of the problem with the child, including facts relating to the problem
 - D. a proposed resolution of the problem to the extent known and available to the person at the time the complaint is filed.
- E. The party filing the complaint must forward a copy of the complaint to the EIP or early intervention services provider serving the child at the same time the party files the complaint with ADES/AZEIP. The party may request that ADES/AZEIP forward the copy on their behalf.
- F. The Part C Coordinator, or designee, will review the complaint to determine its validity for follow-up and further action. A complaint will be judged valid if the alleged violation occurred not more than one (1) year before the date the complaint was received.
- G. The Part C Coordinator, or designee, may provide the individual/agency about whom the complaint is made the opportunity to propose a resolution to the complaint.
- H. The Part C Coordinator or designee will review all relevant information and will:
 - A. Conduct an independent offsite or onsite investigation, as necessary
 - B. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
- I. The Part C Coordinator, or designee, will make an independent determination of whether there is a violation of IDEA, Part C.
 - A. The Part C Coordinator, or designee, will send a written decision

to all parties. The decision shall address each allegation in the complaint and include findings of fact and conclusions with the reasons for the final decision.

- J. When necessary, AzEIP's decision will also include procedures for technical assistance activities and required corrective actions for an agency or provider to achieve compliance.
- K. In resolving a complaint in which it finds a failure to provide services as listed on the IFSP, ADES/AzEIP, pursuant to its general supervisory authority under IDEA, Part C, will address:
 - A. how it will 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 parents
 - B. appropriate future provision of services for all infants and toddlers with disabilities and their families.
- L. All investigations and resolutions must be completed within 60 days of receipt of the complaint unless an exception has been granted.
- M. To request an extension, a party must contact ADES/AzEIP verbally or in writing. ADES/AzEIP will notify all parties if an extension is appropriate and include, where possible, the new date by which the complaint will be resolved.
- N. 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, ADES/AzEIP will 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 action must be resolved within 60 days using the procedure described above.
- O. If an issue is raised in a complaint that 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. ADES/AzEIP must inform the complainant to that effect.

7.10.4 Due Process Complaint and Hearing

- A. To file a due process complaint, a parent must send a written, signed complaint to the Part C Coordinator of ADES/AzEIP which includes both of the following:
 - A. a statement concerning the matters related to AzEIP's proposal or refusal to initiate or change the:
 - i. identification of the child
 - ii. evaluation of the child
 - iii. placement of the child

- iv. provision of early intervention services to the child and family
 - v. the facts of the situation.
- B. An EIP must forward written complaints received by their program to the ADES/AzEIP within one (1) business day of receiving the complaint. ADES/AzEIP will coordinate with the EIP.
- C. If the child who is subject of the hearing is also eligible for another Federal or State program which has its own due process hearing procedures, ADES/AzEIP and the other administrative entity will collaborate to determine jurisdiction based on the nature of the complaint. For all complaints alleging failure to comply with IDEA, Part C, ADES/AzEIP will arrange the due process hearing according to IDEA, Part C.
- D. The following are the steps to initiate a due process hearing:
 - A. a written request must be filed with the Part C Coordinator of ADES/AzEIP.
 - B. the Part C Coordinator of ADES/AzEIP or a designee shall appoint a trained, impartial hearing officer.
- E. The hearing officer shall:
 - A. have knowledge about the provisions of IDEA, Part C and the needs of, and services available for, eligible children and their families
 - B. not be employed by the ADES or an EIP involved in the provision of early intervention services or care of the child and family, except when a person who otherwise qualifies to conduct the hearing is paid by the agency solely to serve as a hearing officer
 - C. not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.
- F. The hearing officer shall:
 - 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
 - D. provide a record of the proceedings, including a written decision.
- G. Unless agreed upon by the parent and ADES/AzEIP, there

shall be no change made in the services received by the child prior to a final order by a hearing officer.

H. The decision made in a due process hearing is final.

7.10.5 Mediation

- A. The following are the steps to initiate the mediation process:
1. A written request is made to the Part C Coordinator of ADES/AzEIP.
 2. The Part C Coordinator of ADES/AzEIP or a designee will obtain written agreement to the mediation process by the parties to the dispute.
- J. Once the agreement is obtained, ADES/AzEIP will appoint a qualified, impartial mediator who is trained in effective mediation techniques. ADES/AzEIP will access qualified mediators who are knowledgeable in laws and regulations related to the provision of early intervention services.
- K. ADES/AzEIP shall ensure that each session of the mediation process is scheduled in a timely manner and held in a location convenient to the parties involved in the dispute.
- L. ADES/AzEIP shall ensure that agreements reached by the parties through mediation will be recorded in a written mediation agreement.