Gap Analysis: Dispute Resolution, Due Process

for States Adopting Part C Procedures

For more information, visit <https://ectacenter.org/topics/gensup/dms-preparing.asp>

# Using this Worksheet

This worksheet is based on the [OSEP Dispute Resolution Due Process Protocol](https://sites.ed.gov/idea/grantees/#DMS,DMS-2), and can help identify gaps in your Dispute Resolution Due Process system. By completing the worksheet, you will assess your state’s status on six of eight Overarching Questions included in the protocol. Use this information to develop plan(s) to address gaps.

# Dispute Resolution: Component Definition

A system required under IDEA and designed as part of a State’s general supervisory responsibility to ensure implementation of IDEA’s dispute resolution procedures (State complaints, mediation, and due process complaints and due process hearings, including the resolution process required under Part B), consistent with IDEA requirements.

# Instructions

Compile, organize, and make accessible to team members all written documents, including internal and public-facing policies and procedures, for each system assessed. Then, use the gap analysis worksheet to review each overarching question's Protocol Items and complete the following:

* Use the Systems Overview developed in **Step 3** to identify current policies, procedures, and practices related to each Protocol Item.
* Determine if what you are doing aligns with the foundational information in **Step 4**.
* Determine if what you are doing (or need to do) is described in your written procedures. Record the document and page number or section where this information can be found.
* Determine and record a status code: 1, 2, 3, or 4.
* Note anything missing or that needs modification.
* Document your key conclusions for the overarching question.

|  |  |
| --- | --- |
| Status Code | Definition |
| 1 | We are doing it correctly and it is documented. |
| 2 | We are doing it correctly, but it needs to be documented. |
| 3 | We are doing some of it, but not all of it, and documentation needs to be developed or modified. |
| 4 | We need to give this item a lot of attention. |

# Overarching Questions

1. How does that State ensure that parties are informed of the due process complaint requirements?
2. How does the State ensure that hearing officers have the necessary knowledge and ability to conduct due process hearings and issue written decisions?
3. How does the State ensure the impartiality of the due process hearing officers?
4. *Overarching Question D is not listed in this worksheet, because it applies only to Part B.*
5. How does the State ensure that written due process hearing decisions are issued within required timelines?
6. *Overarching Question F is not listed in this worksheet, because it applies only to Part B.*
7. How does the State ensure the implementation of due process hearing officer decisions?
8. How does the State use information from due process hearing decisions in its general supervision system?

## **A.** How does that State ensure that parties are informed of the due process complaint requirements?

* [34 CFR §303.421 — Prior written notice and procedural safeguards notice](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR0b42dee73576d72/section-303.421)
* [34 CFR §303.441 — Due process complaint](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR04311f04459d6dc/section-303.441)

### General Information

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | The State must have a model Due Process Complaint form. |  |  |  |

### Possible Follow-Up Questions

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 2 | How does the State ensure that parents are informed of their right to file a due process hearing through its policy and procedures regarding the prior written and procedural safeguards notice? |  |  |  |
| 3 | What guidance is provided on the minimal requirements for a due process complaint to request a due process hearing? |  |  |  |
| 4 | How does the State ensure that its EIS providers have a process in place to respond to and support a parent who wishes to file a due process complaint, but is unable to read or write?  |  |  |  |
| 5 | Does the State permit complaints requesting due process hearings to be filed electronically?1. If so, please describe how parents are made aware that they can file a due process complaint to request a due process hearing electronically.
 |  |  |  |

### Key Conclusions

## **B.** How does the State ensure that hearing officers have the necessary knowledge and ability to conduct due process hearings and issue written decisions?

* [34 CFR §303.435 — Appointment of an impartial due process hearing officer](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFRfa6a4c5e4be47d4/section-303.435)
* [34 CFR §303.443 — Impartial due process hearing](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR04311f04459d6dc/section-303.443)

### General Information

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | The State provides opportunities for hearing officers to receive training on IDEA. |  |  |  |
| 2 | The State must ensure that the hearing officers possess the knowledge and demonstrate the ability to understand and apply IDEA, Federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts.  |  |  |  |
| 3 | The State must ensure that the hearing officers possess the knowledge and demonstrate the ability to conduct hearings and write decisions consistent with IDEA. |  |  |  |

### Possible Follow-Up Questions

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 4 | Which entity employs the hearing officers that handle due process complaints? |  |  |  |
| 5 | What is the State’s process for identifying hearing officer training needs? |  |  |  |
| 6 | How does the State arrange for training to meet the needs of hearing officers? |  |  |  |
| 7 | What is the State’s process for hiring hearing officers who meet the basic requirements? |  |  |  |

### Key Conclusions

## **C.** How does the State ensure the impartiality of the due process hearing officers?

* [34 CFR §303.435 — Appointment of an impartial due process hearing officer](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFRfa6a4c5e4be47d4/section-303.435)
* [34 CFR §303.443 — Impartial due process hearing](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR04311f04459d6dc/section-303.443)

### General Information

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | The State has policies that ensure hearing officers are not employees of the LA.  |  |  |  |
| 2 | The State ensures that the hearing officer is not an EIS provider that is involved in the education or early intervention services or care of the child, infant or toddler. |  |  |  |
| 3 | Payment by the LA of a hearing officer does not automatically make the hearing officer an employee of the LA. |  |  |  |
| 4 | The State has policies that ensure a hearing officer does not have a personal or professional interest that conflicts with the officer’s objectivity in the hearing.  |  |  |  |

### Possible Follow-up Questions

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 5 | What are the State’s procedures for ensuring that hearing officers are impartial in hearings? |  |  |  |
| 6 | How does the State address allegations that a hearing officer was not impartial? |  |  |  |
| 7 | Are there examples from the hearing officer training conducted or any documentation that demonstrates that impartiality requirements were discussed in training? |  |  |  |

### Key Conclusions

## **E.** How does the State ensure that written due process hearing decisions are issued within required timelines?

* [34 CFR §303.430 — State dispute resolution options](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR809caf5a6a9a4dd/section-303.430)
* [34 CFR §303.437 — Convenience of hearings and timelines](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFRfa6a4c5e4be47d4/section-303.437)

### General Information

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | A hearing officer may grant specific extensions of time, at the request of either party. |  |  |  |
| 2 | The State must ensure that the extension is for a specific period of time. |  |  |  |
| 3 | The State must track the length of any extensions granted. |  |  |  |
| 4 | For Part C programs that adopt the Part C procedures 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.  |  |  |  |

### Possible Follow-up Questions

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 5 | What are the circumstances that would warrant an extension? |  |  |  |
| 6 | How does the State ensure that the extension is for a specific period of time (not open-ended)? |  |  |  |
| 7 | What steps does the State take if a due process hearing decision is late? |  |  |  |
| 8 | Does the State have any additional limitations or criteria for extensions? |  |  |  |
| 9 | How is the length of the extension recorded? |  |  |  |
| 10 | How does the State track due process hearing extensions? |  |  |  |
| 11 | If the State finds that a hearing officer is inappropriately extending timelines, what action is taken? |  |  |  |

### Key Conclusions

## **G.** How does the State ensure the implementation of due process hearing officer decisions?

* [34 CFR §303.120 — Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-B/subject-group-ECFR8b0af1d9e085a1a/section-303.120)
* [34 CFR §303.700 — State monitoring and enforcement](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-H/subject-group-ECFRe32b04708514b9c/section-303.700)

### General Information

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | Personally identifiable information (PII) must be redacted from information provided to the public.  |  |  |  |
| 2 | The State must have a process to ensure LAs implement the actions within the timeline ordered by the hearing officer.  |  |  |  |

### Possible Follow-up Questions

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 3 | How does the State ensure that a hearing officer’s decision has been implemented? |  |  |  |
| 4 | What evidence does the State review to substantiate implementation of the hearing officer’s decision? |  |  |  |
| 5 | Does the State impose sanctions/enforcement actions on public agencies that cannot demonstrate timely implementation of hearing officers’ decisions? |  |  |  |
| 6 | If the State receives a State complaint alleging that a hearing officer’s decision has not been implemented, how does the State investigate the complaint? |  |  |  |
| 7 | How does the State make its findings and decisions available to the public? |  |  |  |
| 8 | If the State is using its website to share the due process hearing decisions, how frequently is it updated? |  |  |  |

### Key Conclusions

## **H.** How does the State use information from due process hearing decisions in its general supervision system

* [34 CFR §303.700 — State monitoring and enforcement](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-H/subject-group-ECFRe32b04708514b9c/section-303.700)

### General Information

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | The State has methods of regularly reviewing issues raised in due process hearing decisions to compare to other monitoring information.  |  |  |  |
| 2 | As part of its general supervision system, the State has methods to track the issues identified in due process hearing decisions to determine if patterns or trends exist. |  |  |  |
| 3 | The State has a process for reviewing due process hearing decisions for the purpose of identifying hearing officer training needs and any noncompliance identified by the hearing officer (one-tier) against an EIS provider.  |  |  |  |

### Possible Follow-up Questions

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 4 | How does the State incorporate information from due process hearing decisions in its oversight or monitoring of EIS programs and providers? |  |  |  |
| 5 | How does the State determine whether an issue in a due process hearing complaint may warrant broader guidance throughout the EIS provider or State? |  |  |  |
| 6 | How does the State evaluate the effectiveness of any guidance that may result from due process hearing decisions? |  |  |  |
| 7 | How does the State determine whether similar situations are resolved consistent with past decisions or guidance? |  |  |  |
| 8 | What actions does the State take if the decision identifies any procedural and/or substantive violations of IDEA in a specific EIS provider?  |  |  |  |

### Key Conclusions





This worksheet was adapted by ECTA and CADRE from the *DMS Protocols Adapted for TA Centers Use–Dispute Resolution: State Complaints*, developed by the National Center for Systemic Improvement (NCSI).

The contents of this document were developed under cooperative agreements #H326P170001 (ECTA) and #H326X230002 (CADRE), and grants #H373Z190002 (DaSy) and #H373F200001 (CIFR), from the Office of Special Education Programs, U.S. Department of Education. However, the content does not necessarily represent the policy of the U.S. Department of Education, and you should not assume endorsement by the Federal Government.

ECTA Center Project Officer: Julia Martin Eile

CADRE Project Officer: Carmen M. Sánchez

DaSy Center Project Officers: Meredith Miceli and Amy Bae

CIFR Project Officers: Jennifer Finch and Charles Kniseley