

281—120.71(34CFR303) Due process hearings.

120.71(1) *General.* The lead agency shall ensure that there are written procedures for a timely administrative resolution of requests for hearings filed by parents of eligible children concerning early intervention matters described in subrule 120.70(1). [34 CFR 303.420]

120.71(2) *Administrative law judge.* The lead agency must ensure that any due process hearings carried out are conducted by an administrative law judge who:

- a. Has knowledge about Early ACCESS and Part C of IDEA and the needs of and services available for eligible children and their families;
- b. Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and
- c. Does not have a personal or professional interest that would conflict with the administrative law judge's objectivity in implementing the process.

The administrative law judge's duties include listening to the presentation of relevant viewpoints about the dispute that is the subject of the hearing, examining all information relevant to the issues, seeking to reach a timely resolution of the dispute, and providing a record of the proceedings, including a written decision. [34 CFR 303.421]

120.71(3) *Parental rights in due process hearings.* Any parent involved in a due process hearing has the right to:

- a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for eligible children;
- b. Present evidence and confront, cross-examine and compel the attendance of witnesses;
- c. Prohibit the introduction of any evidence of the proceeding that has not been disclosed to the parent at least five days before the proceeding;
- d. Obtain a written or electronic verbatim transcription of the proceeding; and
- e. Obtain written findings of fact and decisions. [34 CFR 303.422]

120.71(4) *Convenience of hearings and timelines.*

- a. Any due process hearing must be carried out at a time and place that is reasonably convenient to the parent.
- b. Within 30 days after the receipt of a parent's request for a due process hearing, the impartial hearing shall be conducted and a copy of the written decision shall be mailed to each of the parties. [34 CFR 303.423]

120.71(5) *Status of child during proceedings.* During the pendency of any proceeding involving a request for a due process hearing, 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. If the hearing involves an application for initial services, the child must receive those services that are not in dispute. [34 CFR 303.425]

120.71(6) *System-level disputes.* System-level disputes involve conflicts over the roles or responsibilities of an agency partner within the Early ACCESS system. System-level disputes may involve financial matters, the implementation of Early ACCESS system aspects that are not law or rules, such as interagency agreements and policies and procedures, or the implementation of provisions of the interagency agreement. The interagency agreement shall detail the resolution of informal and formal intra-agency and interagency system-level disputes. [34 CFR 303.523; 303.524]

120.71(7) *Delivery of services in a timely manner.* Each grantee shall be responsible for the development of procedures to ensure that services are provided to children eligible for Early ACCESS in a timely manner, pending the resolution of disputes among public agencies or service providers. [34 CFR 303.525]

120.71(8) *Civil action.* Any party aggrieved by the findings of an administrative law judge has the right to bring a civil action in state or federal court. [34 CFR 303.424]