

LEAD AGENCY PROCEDURES FOR RESOLVING SYSTEM COMPLAINTS

Introduction

The Kansas Department of Health and Environment (KDHE) as lead agency receives and resolves any complaint regarding one or more requirements of the Kansas Infant-Toddler Services/tiny-k services (Part C of IDEA) that are not being met. A complaint may be initiated by parents, family members, providers, or organizations.

The interagency aspect of the Kansas Infant-Toddler Services/tiny-k means that complaints may involve violations by

- any public agency in Kansas that receives funds under this part (including the Kansas Department of Health and Environment [KDHE] and the State Interagency Coordinating Council);
- other public agencies involved in the Kansas Infant-Toddler Services/tiny-k; or
- private service providers that receive Kansas Infant-Toddler Services/tiny-k funds on a contract basis from KDHE to carry out a function or provide a service required under this part.

These complaint procedures are in addition to any other rights under state or federal law. At the discretion of KDHE, a provision for filing of a complaint with a public agency and for the right to have KDHE review the public agency's decision on the complaint may be made. KDHE is responsible for informing parents, parent training centers (Families Together, Inc.), protection and advocacy agencies, and other interested individuals about these complaint procedures.

I. Filing a State Complaint [34 C.F.R 303.511]

- A. An organization or individual (including parents and family members) may file a signed written complaint with KSDE and must include:
1. A statement that KDHE, a public agency, or early intervention services provider has violated a requirement of the Kansas Infant-Toddler Services/tiny-k.
 2. The facts on which the statement is based.
 3. The signature and contact information for the complainant.
 4. If alleging violations with respect to a specific child include
 - the name and address of the child;
 - the name of the early intervention services provider serving the child;
 - a description of the nature of the child's problem, including facts relating to the problem; and
 - a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

5. An allegation of a violation that occurred not more than one year prior to the date when the complaint is received unless a longer period is reasonable because
 - (1) The alleged violation continues for that child or other children; or
 - (2) The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.
6. The party filing the complaint must forward a copy of the complaint to the public agency or early intervention services provider serving the child at the same time the party files the complaint with the lead agency.

II. State Complaint Procedures [34 C.F.R. 303.512(a)(b)]

- A. KDHE must resolve any complaint, including a complaint filed by an organization or individual from another state, by providing for the filing of a complaint.
- B. KDHE must widely disseminate the state procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, and other relevant entities.
- C. In resolving a complaint in which KDHE has found a failure to provide appropriate services, a local lead agency must address:
 1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the infant or toddler with a disability and the infant's or toddler's family who is the subject of the complaint; and
 2. Appropriate future provision of services for all infants and toddlers with disabilities and their families.
- D. Within 60 days after a complaint is filed KDHE must:
 1. carry out an independent on-site investigation, if KDHE determines that an investigation is necessary;
 2. give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
 3. provide the lead agency, public agency, or early intervention services provider with the opportunity to respond to the complaint, including, at a minimum
 - at the discretion of the lead agency, a proposal to resolve the complaint; and
 - an opportunity for a parent who has filed a complaint and the lead agency, public agency, or early intervention services provider to voluntarily engage in mediation.
 4. review all relevant information and make an independent determination as to whether the lead agency, public agency, or early intervention services provider is violating a requirement of Part C of the Act or of this part; and
 5. issue a written decision to the complainant within 60 days that addresses each allegation in the complaint and contains
 - findings of fact and conclusions; and
 - the reasons for KDHE's final decision.
 6. include procedures for effective implementation of KDHE's final decision, if needed, including

- technical assistance activities;
- negotiations; and
- corrective actions to achieve compliance.

E. An extension of the time limit under paragraph (A) of this section is permitted only if

1. exceptional circumstances exist with respect to a particular complaint; or
2. the parent (or individual or organization, if mediation is available to the individual or organization under State procedures) and the lead agency or EIS provider involved agree to extend the time to engage in mediation pursuant to this section.

III. Complaints Filed Under This Section and Due Process Hearings [34 C.F.R. 303.512(c)]

A. 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 the hearing, the state must 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 hearing must be resolved within the 60-calendar-day timeline using the procedures described in this section.

B. If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties,

1. the due process hearing decision is binding on that issue; and
2. KDHE must inform the complainant to that effect.

C. A complaint alleging a lead agency or early intervention service provider's failure to implement a due process hearing decision must be resolved by KDHE.

Federal Statute 2004

20 U.S.C. 1435. REQUIREMENTS FOR STATEWIDE SYSTEM.

(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:

(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;

Federal Regulations 1997

Lead Agency Procedures for Resolving Complaints

34 C.F.R. 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 Secs. 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))

34 C.F.R. 303.511 An organization or individual may file a complaint.

- (a) General. An individual or organization may file a written signed complaint under Sec. 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.
- (b) Limitations. The alleged violation must have occurred not more than one year before the date that the complaint is received by the public agency unless a longer period is reasonable because—
- (1) The alleged violation continues for that child or other children; or
 - (2) The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.
- (Authority: 20 U.S.C. 1435(a)(10))

34 C.F.R. 303.512 Minimum State complaint procedures.

- (a) Time limit, minimum procedures. Each lead agency shall include in its complaint procedures a time limit of 60 calendar days after a complaint is filed under Sec. 303.510(a) to—
- (1) Carry out an independent on-site investigation, if the lead agency determines that such an investigation is necessary;
 - (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
 - (3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part C of the Act or of this Part; and
 - (4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—
 - (i) Findings of fact and conclusions; and
 - (ii) The reasons for the lead agency's final decision.
- (b) Time extension; final decisions; implementation. The lead agency's procedures described in paragraph (a) of this section also must--
- (1) Permit an extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint; and
 - (2) Include procedures for effective implementation of the lead agency's final decision, if needed, including—
 - (i) Technical assistance activities;
 - (ii) Negotiations; and
 - (iii) Corrective actions to achieve compliance.
- (c) Complaints filed under this section, and due process hearings under Sec. 303.420. (1) If a written complaint is received that is also the subject of a due process hearing under Sec. 303.420, or contains multiple issues, of which one or more are part of that hearing, the State must 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 the 60-calendar-day timeline using the complaint procedures described in paragraphs (a) and (b) of this section.
- (2) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties—
 - (i) The hearing decision is binding; and
 - (ii) The lead agency must inform the complainant to that effect.
 - (3) A complaint alleging a public agency's or private service provider's failure to implement a due process decision must be resolved by the lead agency.
- (Authority: 20 U.S.C. 1435(a)(10))

State Complaint and Due Process Hearing Procedures

State Complaint 303.510	Due Process Hearing 303.420-424
60-day timeline from the date of receipt of the complaint to complete investigation and issue of written decision addressing each allegation.	30-day timeline from date of receipt of the due process complaint to complete hearing and issue of written decision.
An organization or individual may file a complaint on any issue in dispute related to identification, evaluation, assessment, eligibility, process of developing the IFSP, placement of the child, and appropriateness of early intervention services.	A complaint may be filed on any issue in dispute related to identification, evaluation, assessment, eligibility, process of developing the IFSP, placement of the child, and appropriateness of early intervention services.
Voluntarily participate in mediation within the 60-day timeline unless an extension of time is agreed upon.	Voluntarily participate in mediation within the 30-day timeline for completion.
KDHE must resolve any complaint received.	KDHE appoints an impartial due process hearing officer.
KDHE must carry out an independent on-site investigation.	Due process hearing conducted at time and place reasonably convenient to parents.
<p>KDHE must:</p> <ul style="list-style-type: none"> • give complainant the opportunity to submit additional information; • allow lead agency, public agency, or Early Intervention Services (EIS) provider opportunity to respond to complaint; • determine if violation occurred 	<p>Parents have the right to:</p> <ul style="list-style-type: none"> • Legal counsel, present evidence, and cross-examine witnesses; • Prohibit evidence not disclosed five days prior to hearing; • Receive written transcript and written finding of facts.
KDHE will issue a written decision within 60 days addressing each allegation in the complaint and include effective procedures for implementing the final decision.	Due process hearing officer will mail a written decision to each party no later than 30 days from receipt of complaint.
<ul style="list-style-type: none"> • KDHE must set aside any part of the complaint that is part of a due process hearing. • Any issue that has been decided as part of a due process hearing involving the same parties is binding on that issue. • KDHE must resolve any due process hearing decision the local lead agency or EIS provider has failed to implement. 	<ul style="list-style-type: none"> • The child shall continue to receive early intervention services not in dispute, unless otherwise agreed upon. • Once the child turns 3, Part C is not required to provide EI services during a due process hearing challenging eligibility for Part B.