**Section 500.140 Request for a Due Process Hearing**

a) Who May File: The parents of a child between birth and 36 months, a provider, a regional intake entity or the Department (Complaining Party) may submit a Request for Due Process Hearing to resolve a dispute regarding the evaluation, identification, placement, delivery of services, or provision of appropriate services for their child (or if a public agency, for a child for whom it has responsibility).

b) Where to Send: A Request for Due Process Hearing form shall be used and submitted in writing to the Department at:

Chief

Bureau of Hearings

Illinois Department of Human Services

69 W. Washington Street, 4th Floor

Chicago, Illinois 60602

with copies to the regional intake entity serving the child and to:

Part C Coordinator

EI Program

Illinois Department of Human Services

823 East Monroe

Springfield, Illinois 62701

c) The Request for Due Process Hearing shall be confidential and only used for purposes of resolution of the dispute and as agreed to by the child's parents. The Request for Due Process Hearing shall include:

1) the name of the child;

2) the address of the residence of the child;

3) the name of the provider serving the child;

4) in the case of a homeless child, available contact information for the child and the name of the provider serving the child;

5) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem;

6) a proposed resolution of the problem to the extent known and available to the party at the time;

7) the name, address and telephone number of the child's parent, of the person making the request, if it is someone other than the child's parent, or, if no address, available contact information;

8) the child's date of birth;

9) the name and address of the child's regional intake entity;

10) authorization for release of the child's EI service records to the Department and the hearing officer;

11) the native language spoken by the parents; and

12) evidence supporting the remedy or proposed resolution (i.e., IFSP, family fee calculation form, bill payment, etc.).

d) Determination of Sufficiency: A Complaining Party may not have a Due Process Hearing until the Complaining Party or the attorney representing the Complaining Party files a request for hearing containing all the information listed in subsections (c)(1) through (6). The Request for Due Process Hearing form shall be used, but the request will not be denied if the information is otherwise provided in writing. The Due Process Complaint required by this Section must be deemed sufficient unless the party receiving the request for Due Process Complaint notifies the hearing officer and the other party in writing within 15 days after receipt of the request for Due Process Complaint, that the receiving party believes the request for Due Process Complaint does not meet the requirements of this Section. The hearing officer shall make a determination on the face of the notice as to whether it is sufficient, within five calendar days after receipt of the notification, and shall notify the Complaining Party, the Responding Party and the Department in writing after that determination. Within 10 days, the Responding Party shall send to the Complaining Party a Response that specifically addresses the issues raised in the Request for Due Process Hearing.

e) Child's Record to Department: The regional intake entity shall disclose the complete record of the child to the Department within five calendar days after receipt of the Complaint requesting a proceeding in accordance with this Section.

f) Content and Assurance of Prior Notice: If "prior written notice" pursuant to CFR 303.421 was not provided to the parent regarding the subject matter of the parent's request for a Due Process Hearing, the regional intake entity shall send the parent a response within ten calendar days after receiving the Complaint. This response shall not preclude the assertion that the parent's request for hearing is insufficient, where appropriate. The response shall include:

1) an explanation of why the regional intake entity or payee/provider proposed or refused to take the action raised in the Complaint;

2) a description of other options the IFSP team considered and the reason why those options were rejected;

3) a description of the evaluation procedure, assessment, record or report the agency used as the basis for the proposed or refused action; and

4) a description of factors relevant to the regional intake entity or payee's/provider's proposed or refused action.

g) Amendment of Request: A Complaining Party may amend its Request for Due Process Hearing if the other Responding Parties consent in writing to the amendment and are given the opportunity to resolve the complaint through a resolution meeting as described in subsection (h), or if the hearing officer grants permission no later than five business days before the Due Process Hearing occurs. The timelines for the resolution meeting, described in subsection (h), and for resolution of the hearing request, begin anew with the filing of the amended request.

h) Resolution Period: Upon receipt of a sufficient Request for Due Process Hearing, the Department must convene a resolution meeting with the parent and the relevant member or members of the IFSP Team who have specific knowledge of the facts identified in the Complaint and with a Department representative if necessary. The parent and the Department must determine the relevant members of the IFSP team to attend the meeting. The purpose of this meeting is to provide the parents with an opportunity to resolve the complaint.

1) The resolution meeting must be held within 15 calendar days after receipt of the request for hearing.

2) The resolution meeting must include a representative who is authorized to make decisions on behalf of each party.

3) The Department may not be represented by an attorney at the resolution meeting unless the parent is accompanied by an attorney.

4) If a resolution to the dispute is reached, the parent and the Department shall execute a document that is enforceable in any State court of competent jurisdiction or in a district court of the United States.

5) The Department or the parent may void this agreement within three business days after the agreement's execution.

6) Though recommended, the resolution meeting is not mandatory if the Complaining Party and the Responding Party agree to waive it or agree to use Mediation.

i) Mediation Option: Upon receipt of a Request for Due Process Hearing, the parent and the Department may agree to Mediation as set forth in Section 500.145.

j) Services During Proceeding: During the pendency of the Due Process Hearing, unless the parent and the Department agree otherwise, the child must continue to receive the appropriate Part C EI services identified in the most recent IFSP to which the parents consented. If the Request for Due Process Hearing involves application for initial Part C services, the child must receive those services that are not in dispute.

k) Free and Low-Cost Services: The parent shall be informed of free or low cost legal and other related services available in the area if the parent requests that information or the parent, provider, regional intake entity or Department initiates a resolution under these provisions. Regional intake entities shall maintain the information and make it available upon request or if a proceeding is initiated under this Section.

l) Hearing Officer: Upon receipt of a Request for Due Process Hearing, the Department shall appoint an impartial hearing officer. The Department shall maintain a list of hearing officers that includes a statement of the qualifications of each person hearing Due Process complaints. An impartial hearing officer must:

1) be licensed to practice law in Illinois;

2) have knowledge about the provisions of IDEA Part C and the Illinois EI Services System Act, the needs of eligible children and their families, and services available to them;

3) not be an employee of the Department or a State educational agency, LEA or private service provider involved in the provision of EI services or care of the child; and

4) not have a personal or professional interest that would conflict with his/her objectivity in implementing the process.

m) Time Limit to File: A Request for Due Process Hearing must be submitted to the Department as soon as possible, but at least within three months after the date when the complainant knew or should have known about the alleged action that forms the basis of the complaint. This timeline does not apply during any period of time that the parent was prevented from requesting the hearing due to:

1) specific misrepresentations by the Department, provider or regional intake entity that the problem forming the basis of the complaint has been resolved; or

2) the Department, regional intake entity or provider withholding information from the parent that is required to be provided to the parent.

n) 30-Day Resolution Period Prior to Hearing: If the Department has not resolved the complaint to the satisfaction of the parent within 30 days after the receipt of the Request for Due Process Hearing, the hearing may occur and the 45-day timeline for resolution of the complaint by the hearing officer begins. This 30-day time period will be delayed by any length of time the parent fails to participate in the resolution meeting, unless the Department and the parent have jointly agreed to waive the resolution meeting or to use Mediation.

o) Parent or Regional Intake Entity Non-participation: If the Department is unable to obtain participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the hearing officer may dismiss the complaint. If the Department fails to hold the resolution meeting within 15 days after receiving notice of the complaint or fails to participate in the meeting, the parent may request the hearing officer to begin the 45-day timeline for resolution of the complaint.

p) 45-Day Hearing Resolution Time Period:

1) The hearing must be resolved within 45 days, with final decision completed and mailed to the parties. The 45-day time period begins the day after one of the following:

A) the parties agree in writing to waive the resolution meeting; or

B) a Mediation or resolution meeting starts but the parties agree in writing before the end of the 30-day period that no agreement is possible; or

C) the parties agree in writing to continue the Mediation at the end of the 30-day resolution period, but the parent or regional intake entity later withdraws from the Mediation process.

2) The parties shall immediately notify the appointed hearing officer and the Department in writing as soon as any of the events described in subsection (p)(1) occurs.

q) Setting a Hearing: Within five days after receiving written notification that the 45-day time period for resolution has begun pursuant to subsection (p), the appointed hearing officer shall contact the parties to determine a time and place reasonably convenient to the parties for a hearing and any pre-hearing conferences. The hearing officer shall provide the parties and the Department at least 10 days' written notice of the dates, times, and locations of any pre-hearing conferences and of the hearing.

r) Pre-hearing Conference: The hearing officer may conduct a pre-hearing conference either in person or by telephone in order to narrow the issues, determine stipulations by the parties, exchange evidence and names of witnesses, and consider other matters that may aid in efficient disposition of the case. At the conclusion of the pre-hearing conference, the hearing officer will prepare a written report of the conference to be entered into the hearing record memorializing the discussion, any stipulations and orders, and scheduling accommodations made for parties or witnesses.

s) Party's Rights: Any party to a hearing has a right to:

1) be accompanied (at the party's expense) and advised by counsel and by individuals with special knowledge or training with respect to children with disabilities;

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 that party at least five days before the proceedings;

4) obtain a written or, at the option of the parent, electronic verbatim record of the hearing; and

5) obtain written or, at the option of the parent, electronic findings of fact and decision.

t) Parents' Rights: Parents involved in hearings must be given the right to:

1) have the child who is the subject of the hearing present;

2) open the hearing to the public (hearings shall be closed to the public unless the parent requests them to be open); and

3) have the record of the hearing, the findings of fact and decision provided at no cost to the parents.

u) Disclosure of Evidence and Witnesses: As soon as possible, but at least five business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on those evaluations that the party intends to use at the hearing, as well as other evidence to be offered at hearing, names of all witnesses and the nature of their testimony, and any other relevant documentation whether or not it will be offered at the hearing.

v) Barring Evidence and Witnesses: The hearing officer may bar any party failing to comply with subsection (u) from introducing evidence or calling witnesses at hearing that were not produced as required in subsection (u).

w) Scope of Hearing: No party shall be allowed to raise issues at the hearing that were not raised in the request for resolution, unless the other parties agree.

x) Hearing Office Authority: The hearing officer is authorized to conduct the hearing, administer oaths, issue subpoenas to compel testimony or production of documents, rule on motions, grant continuances, call or examine witnesses, and take such other action as may be necessary to provide the parties with an opportunity to be heard fairly and expeditiously.

y) Burden of Proof: At the hearing, the party who requested the hearing has the burden of proceeding first and demonstrating by a preponderance of the evidence that the provision or proposed provision of EI services for the child violates the laws or rules governing EI services.

z) Closing Arguments: Upon completion of the submission of evidence and testimony, parties shall be given a reasonable period of time to present written or oral arguments to complete the process within 45 days.

aa) Substantive Versus Procedural Violations: The hearing officer's determination as to whether the child received appropriate EI services shall be made on substantive grounds. In matters alleging a procedural violation, the hearing officer may find that a child did not receive appropriate EI services only if the procedural inadequacy impeded the child's right to appropriate EI services; or significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of appropriate EI services; or caused deprivation of developmental benefit. This does not preclude the hearing officer from ordering the Department or payee/provider to comply with procedural requirements.

bb) Hearing Record: The hearing officer shall maintain and prepare a record of the proceeding and shall prepare written findings and a decision that shall be served upon the parties. The record shall contain the request for the proceeding, evidence submitted at the hearing, a transcript or recording of the hearing, prehearing conference reports, motions, orders and all other material that is part of the record.

cc) Findings Made Public: Any and all written findings and decisions shall be transmitted to the Illinois Interagency Council on EI and be made available to the public without personally identifying information.

dd) Request for Delay: Either party may request a delay in convening the hearing and/or the pre-hearing conference for good cause. The party requesting the delay shall do so in writing to the hearing officer, with a copy served at the same time to all parties. The requesting party shall set forth the reasons for the request and the hearing officer shall, upon receiving the request, either grant or deny the request, taking into account the right to resolution as set forth in subsection (p), which may be waived.

ee) Appeal: Any party aggrieved by the findings and decision made in the hearing has a right to bring civil action in a State court of competent jurisdiction or in a district court of the United States regardless of the amount in controversy.

ff) Calculation of Time: Time periods set forth in this Section are calendar days unless otherwise specified.

(Source: Amended at 40 Ill. Reg. 9491, effective June 29, 2016)