Gap Analysis: Dispute Resolution, Due Process

for States Adopting Part B Procedures for Part C

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 seven 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.

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| --- | --- |
| 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. |

# Notes on Due Process Hearings

1. Under Part B of IDEA, States may choose to have a one-tier due process system or a two-tier due process system. This option is also available to Part C programs that adopt the Part B due process procedures. If the State has adopted a one-tier due process hearing system, the LA is responsible for conducting the due process hearing. If the State has adopted a two-tier due process hearing system, the public agency directly responsible for the education of the child is responsible for conducting the due process hearing, and a party aggrieved by the decision has the right to appeal to the LA.
2. Under Part C of the IDEA, the LA must adopt and make available to parties either:
   1. the Part C due process hearing procedures under [Section 639](https://sites.ed.gov/idea/statute-chapter-33/subchapter-iii/1439) of the Act through [34 CFR §303.430(d)(1)](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR809caf5a6a9a4dd/section-303.430#p-303.430(d)(1)) and [§§303.435 through 303.438](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFRfa6a4c5e4be47d4), or
   2. the Part B due process hearing procedures under [Section 615](https://sites.ed.gov/idea/statute-chapter-33/subchapter-ii/1415) of the Act through [34 CFR §303.430(d)(2)](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR809caf5a6a9a4dd/section-303.430#p-303.430(d)(2)) and [§§303.440 through 303.449](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR04311f04459d6dc).

The different timeline requirements included in these two options are addressed in section F of this document. LAs indicate to OSEP whether they have adopted for resolution of IDEA Part C matters their Part B or Part C due process hearing procedures in their Annual Performance Report (APR) or 618 EMAPS dispute resolution data.

# Overarching Questions

1. How does the State ensure that parties are informed of the due process complaint requirements, including access to the State's model Due Process Complaint form?
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. How does the State ensure that EIS providers properly implement the resolution process? (Resolution meetings)
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 the State ensure that parties are informed of the due process complaint requirements, including access to the State’s model Due Process Complaint form? (Model form only required for Part B)

* [34 CFR §300.508 — Due process complaint](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-E/section-300.508)
* [34 CFR §300.509 — Model forms](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-E/section-300.509)
* [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

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| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | The State must have a model Due Process Complaint form. |  |  |  |
| 2 | The State forms need to include the necessary elements for a Due Process Complaint:   1. The name of the child, 2. The address of the residence of the child, 3. The name of the school the child is attending, 4. In the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434(a)(2)), available contact information for the child, and the name of the school the child is attending; 5. Description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts related to the problem, and 6. A proposed resolution of the problem to the extent known and available to the party at the time. |  |  |  |
| 3 | States cannot require any party (e.g., parents, EIS providers or otherwise) to use the model form. |  |  |  |
| 4 | Within five days of receipt of notification from a party that a due process complaint is insufficient, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the minimum requirements and must immediately notify the parties in writing of that determination. |  |  |  |
| 5 | The State needs to ensure that the model due process complaint form is publicly available and accessible by widely disseminating it to parents and other stakeholders. |  |  |  |

### Possible Follow-Up Questions

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 6 | 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? |  |  |  |
| 7 | What guidance is provided on the minimal requirements for a due process complaint to request a due process hearing? |  |  |  |
| 8 | 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? |  |  |  |
| 9 | 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. |  |  |  |
| 10 | How can stakeholders access the model form?   1. Is the model form posted on the State's website? 2. Is the model form included within the Procedural Safeguards notice? 3. Is the model form provided through outreach to stakeholder advocacy groups (e.g., PTI Centers, P & A Agencies, disability organizations)? |  |  |  |
| 11 | How does the State assist parent’s whose native language is not English - Is the form available in multiple languages? If not, what assistance is available to parents in completing the form if English is not their native language? |  |  |  |
| 12 | Does the State require aggrieved parties to use a model form to file a Due Process Complaint? |  |  |  |
| 13 | Is there any language on the State’s model form or related guidance that indicates that the form is required to be used to file a Due Process Complaint? |  |  |  |
| 14 | If the State includes data elements not required by IDEA, does the State clearly identify those elements as optional? |  |  |  |
| 15 | If the State includes additional “optional elements,” what action does the LA take if the complainant does not include the requested information that is optional? |  |  |  |

### 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 §300.511 — Impartial due process hearing](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-E/section-300.511)
* [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

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| --- | --- | --- | --- | --- |
| 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

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| --- | --- | --- | --- | --- |
| 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 §300.511 — Impartial due process hearing](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-E/section-300.511)
* [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)
* [OSEP Memo 13-08 and Q&A on Dispute Resolution](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf) (Question C-15)

### General Information

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| --- | --- | --- | --- | --- |
| 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

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| --- | --- | --- | --- | --- |
| 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

## **D.** How does the State ensure that EIS providers properly implement the resolution process? (Resolution meetings)

* [34 CFR §300.510 — Resolution process](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-E/section-300.510)
* [34 CFR §303.442 — Resolution process](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-303/subpart-E/subject-group-ECFR04311f04459d6dc/section-303.442)

### General Information

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 1 | The resolution period is 30 days from the receipt of the parent's due process complaint, but this period may be adjusted if:   1. Both parties agree in writing to waive the resolution meeting; 2. After either the mediation or resolution meeting starts, but before the end of the 30-day period, the parties agree in writing that no agreement is possible (going straight to hearing); or 3. Both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later a party withdraws from the mediation process. |  |  |  |
| 2 | The State must ensure resolution meetings are held within 15 days of the other party receiving notice of the due process complaint. The State has a process for reviewing LA data on resolution meetings, including timelines. |  |  |  |
| 3 | If the LA fails to hold the resolution meeting within 15 days of receiving notice of a parent’s due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. |  |  |  |
| 4 | If the LA is unable to obtain the participation of the parent in the resolution meeting, after making reasonable efforts, at the conclusion of the 30-day resolution period, the LA may request that a hearing officer dismiss the parent’s due process complaint. |  |  |  |
| 5 | If a Part C program has adopted the Part B due process hearing procedures, the LA is responsible for convening resolution meetings in a timely manner. |  |  |  |
| 6 | Resolution meetings must include a representative of the public agency who has decision-making authority on behalf of that agency. |  |  |  |
| 7 | Resolution meetings may not include LA attorneys if the parent is not accompanied by an attorney. |  |  |  |
| 8 | If a resolution meeting did not occur, the State must have documentation that both parties agreed in writing to waive the resolution meeting or agreed to use mediation. |  |  |  |

### Possible Follow-up Questions

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 9 | How does the LA ensure that the LA is tracking the 15-day timeline to hold the resolution meeting? |  |  |  |
| 10 | How does the LA ensure that the LA track the 30-day resolution process timeline? |  |  |  |
| 11 | Have there been any complaints about how LAs are implementing resolution meeting requirements? And if so, how has the State responded or resolved those complaints? |  |  |  |
| 12 | How does the State ensure the LA includes a public agency representative with decision-making authority in the resolution meeting? |  |  |  |
| 13 | What happens if a resolution meeting has not been scheduled by the end of the 15-day timeline? |  |  |  |
| 14 | What happens if a resolution meeting has not been scheduled by the end of the 30-day timeline? |  |  |  |
| 15 | What training has been offered or what procedures have been put into place to make sure that LAs are properly implementing the resolution process? |  |  |  |
| 16 | How does the State work with its LAs to improve resolution meeting timeliness and outcomes, when applicable? |  |  |  |
| 17 | Does the State impose sanctions/enforcement actions on LAs that are not holding resolution meetings or resolving due process complaints a timely manner? |  |  |  |

### Key Conclusions

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

* [34 CFR §300.510 — Resolution process](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-E/section-300.510)
* [34 CFR §300.515 — Timelines and convenience of hearings and reviews](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-E/section-300.515)
* [34 CFR §300.532 — Appeal](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-E/subject-group-ECFRfb9aefa81a38ee9/section-300.532)
* [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

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| --- | --- | --- | --- | --- |
| 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 | The 45-day period for issuing a final decision after a due process hearing held on a due process complaint starts the day after one of the following events:   1. Both parties agree in writing to waive the resolution meeting; 2. After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or 3. If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process. |  |  |  |
| 5 | The State maintains a process to track the 30-day resolution period and any adjustments made to that period. |  |  |  |
| 6 | If a Part C program adopts the Part B due process procedures, the lead agency may adopt a 30- or 45-day timeline for the resolution of due process complaints and must specify in its written policies and procedures the specific timeline it has adopted. |  |  |  |

### Possible Follow-up Questions

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 7 | What are the circumstances that would warrant an extension? |  |  |  |
| 8 | How does the State ensure that the extension is for a specific period of time (not open-ended)? |  |  |  |
| 9 | What steps does the State take if a due process hearing decision is late? |  |  |  |
| 10 | Does the State have any additional limitations or criteria for extensions? |  |  |  |
| 11 | How is the length of the extension recorded? |  |  |  |
| 12 | How does the State track due process hearing extensions? |  |  |  |
| 13 | If the State finds that a hearing officer is inappropriately extending timelines, what action is taken? |  |  |  |

### Additional Protocol Items Applicable to States with Two-Tier Due Process Systems

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 14 | What are the State’s procedures for ensuring the 45-day (or 30-day [Part C]) timeline for the due process hearing in a State with a two-tier Due Process system begins on the correct date? |  |  |  |
| 15 | What oversight does the LA have regarding Tier One activities? How does the LA ensure that the hearing officer decisions are issued within timelines or appropriately extended timelines? |  |  |  |
| 16 | Describe the State’s process for conducting an impartial review of the hearing officer’s decision. |  |  |  |
| 17 | How does the second-tier review system ensure that a decision meets the 30-day timeline (unless extended by a hearing officer) and that a copy of the decision is mailed to each party? |  |  |  |
| 19 | How do parties appeal a Tier One decision to the LA? How long do they have to appeal the decision? How and when are parties notified of their right to appeal a decision to the LA? |  |  |  |
| 19 | What documentation does the LA receive (and from whom) when a decision is appealed to the LA? (i.e., is the parent, the LEA, or the hearing officer, required to send the information?) |  |  |  |
| 20 | How and when are State review officers (SROs) assigned to an appeal at Tier Two? |  |  |  |
| 21 | What training are SROs provided? |  |  |  |
| 22 | What oversight does the LA exercise over the Tier Two process (timelines, etc.)? |  |  |  |
| 23 | How does the LA ensure that SRO decisions are issued within timelines or appropriately extended timelines? |  |  |  |

### Key Conclusions

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

* [34 CFR §300.149 — SEA responsibility for general supervision](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-B/subject-group-ECFRf3191dc58290c0e/section-300.149)
* [34 CFR §300.600 — State monitoring and enforcement](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-F/subject-group-ECFR76957f34acb3422/section-300.600)
* [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)
* [OSEP Memo 13-08 and Q&A on Dispute Resolution](https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf) (Question C-26)

### General Information

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| 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. |  |  |  |
| 3 | Findings and decisions must be made available to the public. |  |  |  |

### Possible Follow-up Questions

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| --- | --- | --- | --- | --- |
| ID | Protocol Item | Evidence | Status Code | What’s Missing/Next Steps |
| 4 | How does the State ensure that a hearing officer’s decision has been implemented? |  |  |  |
| 5 | What evidence does the State review to substantiate implementation of the hearing officer’s decision? |  |  |  |
| 6 | Does the State impose sanctions/enforcement actions on public agencies that cannot demonstrate timely implementation of hearing officers’ decisions? |  |  |  |
| 7 | 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? |  |  |  |
| 8 | How does the State make its findings and decisions available to the public? |  |  |  |

### Key Conclusions

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

* [34 CFR §300.600 — State monitoring and enforcement](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300/subpart-F/subject-group-ECFR76957f34acb3422/section-300.600)
* [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

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| --- | --- | --- | --- | --- |
| 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), or State reviewing officer (two-tier), against an EIS provider. |  |  |  |

### Possible Follow-up Questions

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| --- | --- | --- | --- | --- |
| 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).

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