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Chapter 10: Dispute Resolution

Every effort should be made to resolve family-provider disagreements using informal decision making. If informal decision making is unsuccessful, parents may choose, by filing a written request to the State Lead Agency, the Department of Behavioral Health and Developmental Services (DBHDS), one of the following options:

1. Administrative complaint;
2. Mediation alone;
3. Mediation and a due process hearing simultaneously; or
4. A due process hearing alone.

In addition to the dispute resolution options available through the Infant & Toddler Connection of Virginia, Medicaid/FAMIS recipients have the right to file an appeal with the Department of Medical Assistance Services when they disagree with certain actions. Actions that may be appealed include disagreement about:

- The child’s eligibility for early intervention services;
- The provision of early intervention services, including those listed on an Individualized Family Service Plan (IFSP); and
- The frequency and length of the IFSP services.

Therefore, regardless of whether or not the family expresses agreement or disagreement, the family must receive the *Early Intervention Services – Notice of Action* letter if:

- The child is found ineligible;
- The local system is refusing to initiate a service the family is requesting or is refusing to provide a service at the frequency/length desired by the family; or
- A service is decreased or ended.

The Notice of Action letter ensures families know their right to appeal since not all families will express their disagreement and some families may initially agree with the action but later change their mind. Appeals must be requested in writing and postmarked within 30 days of the date on the *Early Intervention Services – Notice of Action* letter. The family or their authorized representative may write a letter or complete an Appeal Request Form. Forms are available on the internet at www.dmas.virginia.gov and through a link on the Infant & Toddler Connection of Virginia’s website at www.infantva.org. The *Notice of Child and Family Rights and Safeguards Including Facts About Family Cost Share* provides additional information about the process of filing a Medicaid appeal.

FAQs: When Notice of Action Is Needed

- When the local system is going to discharge a child who has been lost to contact (through repeated no-shows or other circumstances)? Yes
- If the child no longer meets eligibility requirements (but is still under 3)? Yes
- When the family declines one or more or all services? No
- When the family requests to decrease or end a service? No
- When the child reaches age 3? No
- When the child transitions to Part B (between ages 2 and 3)? No
- When the child moves to another state or another local system in Virginia? No

Service Coordinator Responsibilities:

1. Ensure that when disagreement occurs on matters relating to identification, eligibility determination, or placement of the child or the provision of appropriate early intervention supports and services under Part C for the child and family, the parent of the child is informed, in writing and verbally, of the options for resolution. The *Notice of Child and Family Rights and Safeguards Including Facts About Family Cost Share and Strengthening Partnerships: A Guide to Family Rights and Safeguards in the Infant & Toddler Connection of Virginia Part C Early Intervention System* provide written information about the options for dispute resolution. The Strengthening Partnerships document is an especially helpful tool for service coordinators to use in reviewing this information with families.
 - a. For Medicaid/FAMIS recipients only: Complete and provide the family with the *Early Intervention Services – Notice of Action* letter and explain to the family their right to appeal under Medicaid any time there is an adverse action proposed by the Infant & Toddler Connection system (e.g., the child is found ineligible, the local system is refusing to initiate a service the family is requesting or is refusing to provide a service at the frequency/length desired by the family, the IFSP team is proposing to end a service). Point out where additional information about the appeal process is located in the *Notice of Child and Family Rights and Safeguards Including Facts About Family Cost Share*
2. Provide the family with a contact at DBHDS who can:
 - a. Offer them technical assistance in framing their complaint, including language interpreters as requested and/or reducing oral complaints to writing; and
 - b. Inform them of individuals and organizations who provide free or low cost legal or lay assistance to persons who wish to lodge a complaint (such as parent training and information centers, protection and advocacy programs, and legal aid organizations).
3. Ensure that during dispute resolution, unless the family and local lead agency agree otherwise, the child and family continue to receive the supports and services on the child's current IFSP.
4. Ensure that if the family-provider disagreement involves initial eligibility to receive supports and services under Part C, the child and family will not receive supports and services under Part C until the eligibility question is resolved.

5. Ensure that if a family chooses to appeal a decision using the Medicaid Right to Appeal procedures, the family also is informed of their options for dispute resolution under Part C.
6. Ensure that families understand their right to bring a civil action in Federal or State court if they are not satisfied by the hearing officer's decision in a due process hearing.

Procedures for Mediation:

1. Either party (the family or local lead agency) may request or decline the mediation conference. If the local lead agency declines the mediation, the parents must be informed as soon as possible (within four days) of this decision and the right to pursue a hearing.
2. DBHDS appoints a trained mediator within five (5) days of receiving the request for mediation.
3. The local lead agency appoints a representative to serve on their behalf during mediation.
4. The mediation, including a written mediation agreement reflecting agreements reached by the parties to the dispute, is completed within 15 calendar days of the receipt by the DBHDS of notice that both parties have agreed to mediation. The mediation agreement must be signed by both the parent and an authorized representative of the local lead agency. If resolution is not reached within 15 days, DBHDS informs the parents in writing that they may request a due process hearing. Extensions of the 15-day timeline may be granted for good cause. Examples of good cause include injury, illness, or natural disaster. If there is a simultaneous request for mediation and a due process hearing, the extension must not result in a violation of the 30-day timeline for completion of the due process hearing.
5. At any time during the mediation process, a request for a due process hearing may be initiated.
6. DBHDS bears the full cost of the mediation process.
7. A flow chart of the process for requesting and using mediation to resolve disagreements is provided at the end of this chapter.

Procedures for a Due Process Hearing:

1. DBHDS arranges for the appointment of an impartial hearing officer within five days following receipt of the request for a hearing.
2. The due process hearing is carried out at a time and place that is reasonably convenient for the parents.
3. Any family 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 supports and services for children eligible under Part C;
 - b. Present evidence and confront, cross-examine and compel the attendance of witnesses;
 - c. Prohibit the introduction of any evidence at 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 at no cost to the parent; and
 - e. Obtain written findings of fact and decisions at no cost to the parent.
4. Costs for resolution of parent/provider disagreements by due process hearing are equally shared by the local lead agency and DBHDS. The costs shared include

- expenses of the hearing officer (i.e., time, travel, secretarial, postal and telephone expenses), expenses incurred by order of the hearing officer (i.e., independent educational evaluations, deposition or transcript), and expenses for making a record of a hearing (i.e., hearing tapes). DBHDS is not responsible for expenses incurred for witnesses (except where hearing officers subpoena witnesses on their own initiative) or for attorney's fees.
5. The hearing officer issues a written decision to all parties within 30 days of receipt by DBHDS of the request for a due process hearing, unless the hearing officer grants an extension of the timeline at the request of either party.
 6. A flow chart of the process for requesting and using a due process hearing to resolve disagreements is provided at the end of this chapter.

Procedures for an Administrative Complaint*:

DBHDS will complete the following steps within 60 days of receiving a written complaint.

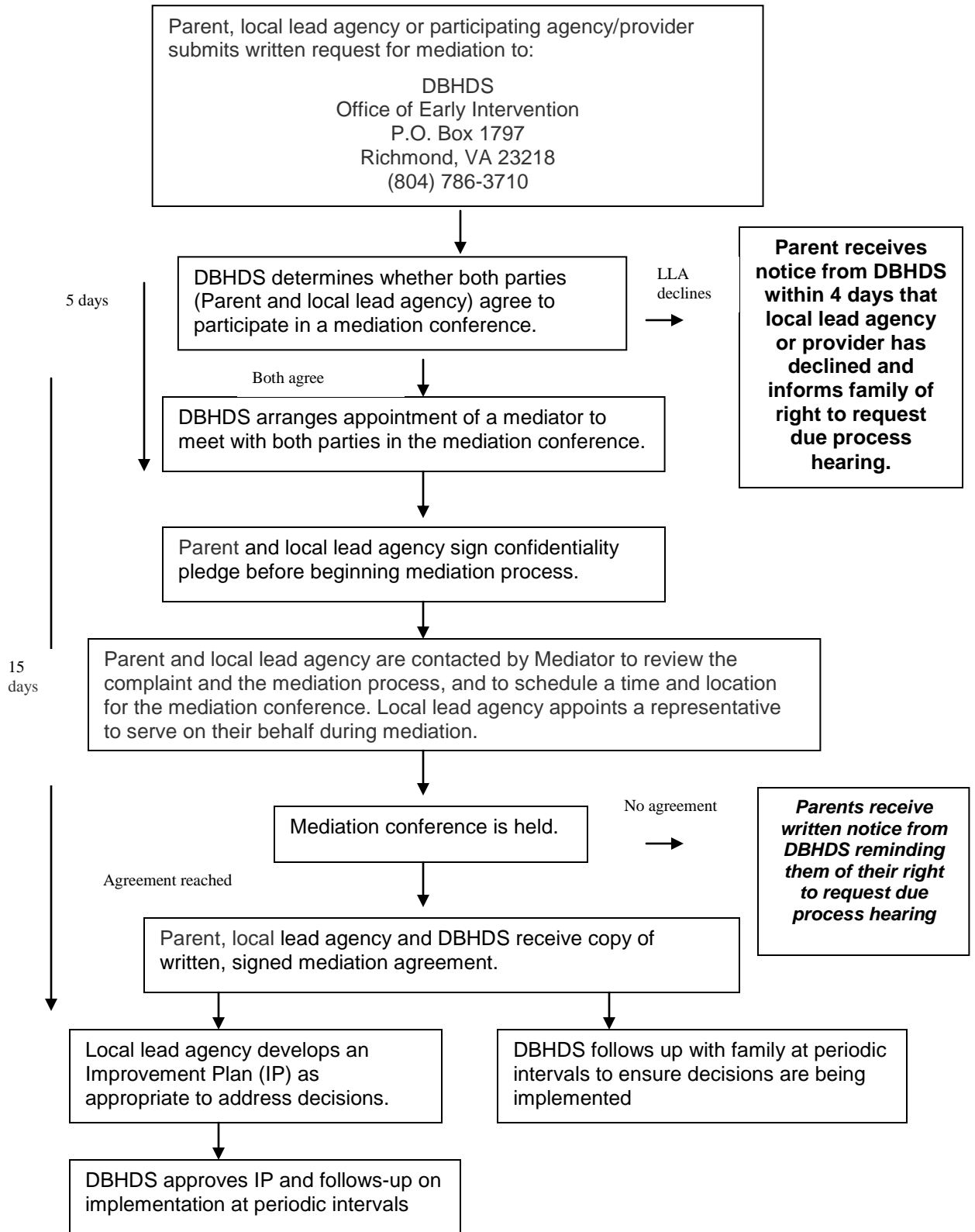
1. Send notification in writing to each complainant and the local lead agency against which the violation has been alleged, acknowledging receipt of a complaint with copies to other appropriate personnel and the family. The notification sent by DBHDS includes:
 - a. A copy of the complaint;
 - b. A summary of issues to be addressed in resolving the complaint;
 - c. An offer of technical assistance in resolving the complaint;
 - d. A request for written response to the complaint within ten days of the date of the letter of notification. When possible, resolution is reached at the local level during this time.

If a reply from the local lead agency is not filed with DBHDS within ten days, DBHDS sends a second notice to the local lead agency and telephones the local lead agency.
2. Review the complaint and the reply filed by the local lead agency.
 - a. If no further investigation or action is necessary, DBHDS notifies both parties, in writing, stating the resolution.
 - b. If the reply does not resolve the complaint, DBHDS reviews all documentation presented and conducts an independent onsite investigation, if necessary.
3. Resolve the complaint based upon the facts and applicable law and notify the parties, in writing, of the decision, including findings of fact and conclusions and the reasons for the final decision reached by DBHDS.
4. Address, if it finds a failure to provide appropriate supports and services, the following:
 - a. How to remediate the denial of those supports and service, including, as appropriate, the awarding of compensatory services or monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family;
 - b. Appropriate future provision of supports and services for all infants and toddlers with disabilities and their families.
5. A flow chart for filing and resolving administrative complaints is provided at the end of this chapter.

An extension of the 60 calendar day time limit may occur if exceptional circumstances exist with respect to a particular complaint. Both parties to the complaint are notified in writing by DBHDS whenever exceptional circumstances (e.g., illness, death) exist and the extended time limit is specified.

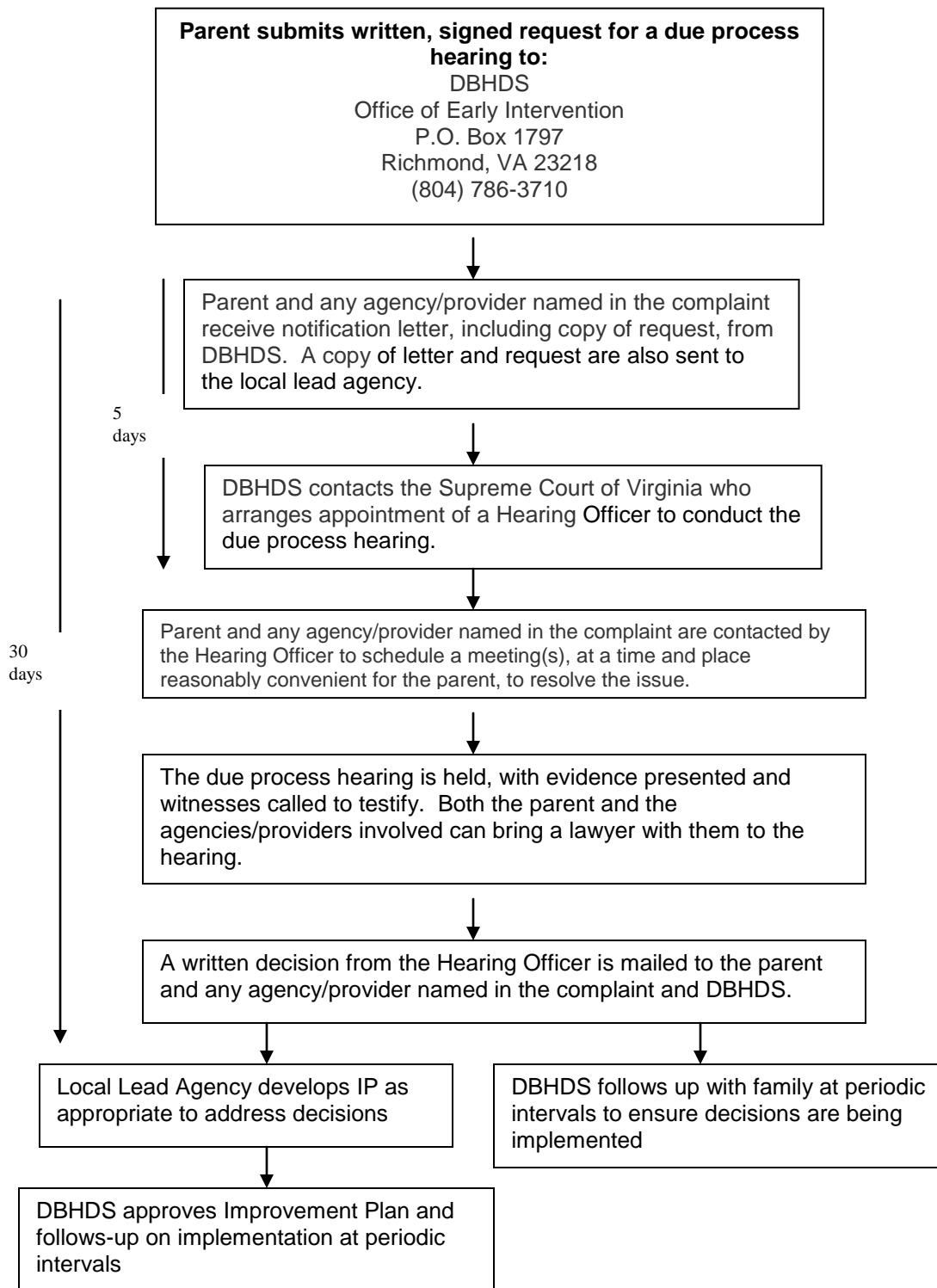
* If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, DBHDS must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action will be resolved within the 60-calendar-day timeline using the complaint procedures described above. If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding; and DBHDS informs the complainant to that effect.

Process for Requesting and Using Mediation to Resolve Disagreements¹



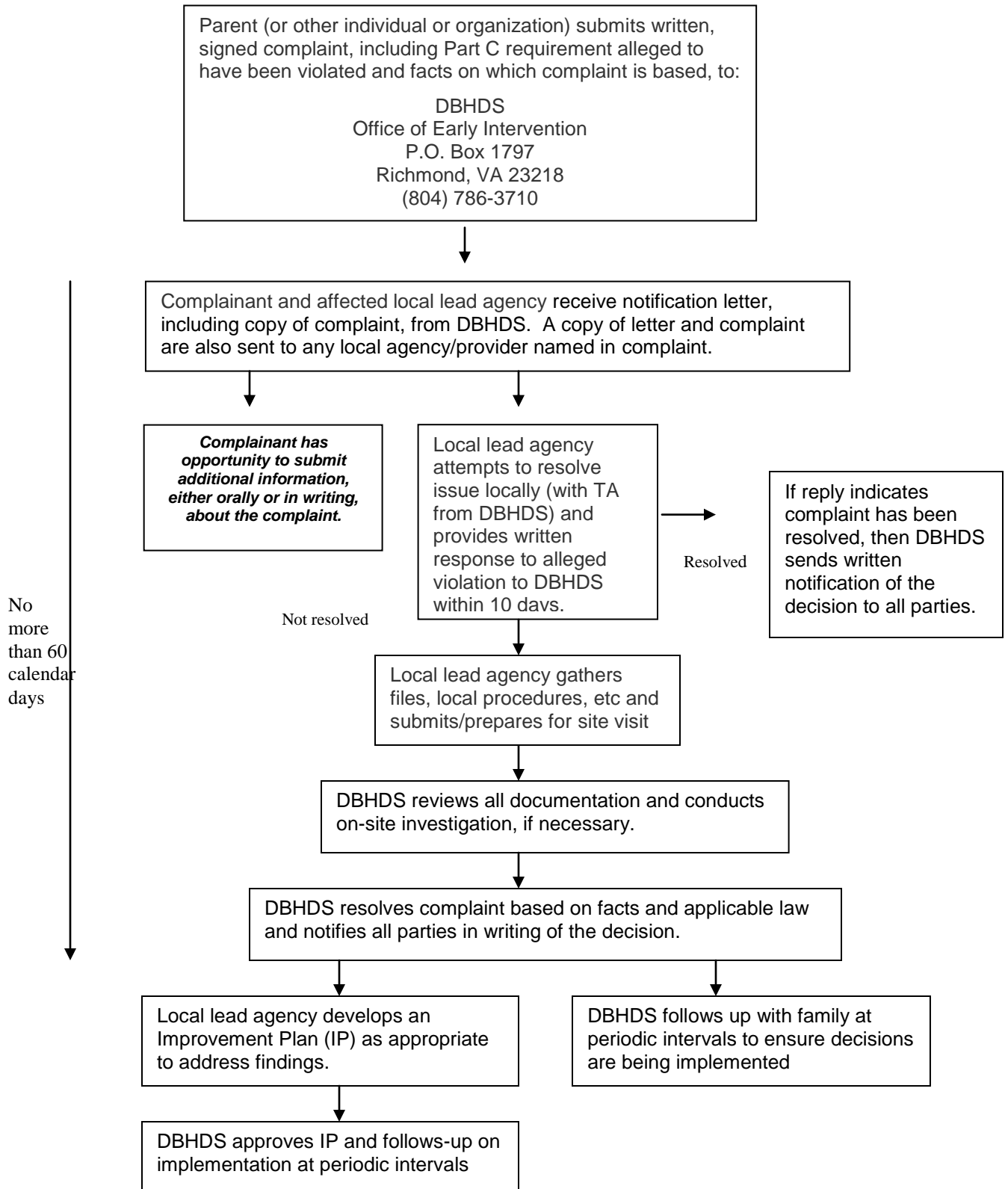
¹ At any time during the mediation process, the parent may request a due process hearing being initiated. Mediation may not be used to deny or delay a parent's rights to a due process hearing.

Process for Requesting and Using a Due Process Hearing to Resolve Individual Child Complaints²



² If the parent requests mediation and a due process hearing simultaneously, then the steps in the flow charts for both mediation and due process would take place at the same time and must all be completed within 30 calendar days of the receipt of the request (with mediation completed within the first 15 days).

Process for Filing and Resolving Administrative Complaints



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