

ANNOUNCEMENT: EI-12 # 05

Effective Date: 7/1/2012

Subject: Mediation, Due Process, and IFSP Facilitation Procedures for Infant/Toddler Early Intervention

TO: Infant/Toddler Early Intervention Leadership

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Deputy Secretary, Office of
Child Development & Early Learning



PURPOSE:

The purpose of this announcement is to provide guidance on the new requirements under regulations for the Part C Program of the Individuals with Disabilities Education Act Amendments of 2004 published on September 28, 2011 related to mediation and due process and Individualized Family Service Plan (IFSP) facilitation contact information. This Announcement updates Early Intervention (EI) Announcement 07 #03 *Mediation Procedures for Early Intervention, Part C*. As of the issuance date of this Announcement, EI Announcement 07 #03 shall be obsolete.

BACKGROUND:

The Pennsylvania EI Program is implemented in compliance with the Individuals with Disabilities Education Act (IDEA) as amended by Public Law, 108-446, the Pennsylvania Early Intervention Services System Act, Pennsylvania Act 212-1990, and Pennsylvania Early Intervention Services, Chapter 4226. With the reauthorization of IDEA in 2004, revisions were made to the EI Program for Infants and Toddlers with Disabilities, Part C. The Part C regulations related to the reauthorization of IDEA 2004 were published on September 28, 2011. Many of the requirements detailed in the Part C IDEA regulations related to due process and mediation are currently in practice in Pennsylvania, however specific revisions related to due process requirements can be found on page 2.

DISCUSSION:

Mediation

The Departments of Education and Public Welfare, Office of Child Development and Early Learning (OCDEL) have contracted with the Office for Dispute Resolution (ODR) to provide mediation and due process services.

ODR has a staff of trained, impartial mediators who are assigned to conduct the session when a request for mediation is submitted. Mediations are a voluntary process offered to parents who

request mediation or a due process hearing. Mediators are selected on a random, rotational or other impartial basis.

The family or Infant/Toddler EI program may request a mediation session by contacting ODR either orally or in writing at 1-800-222-3353 or <http://odr-pa.org/>. If a family requests mediation through the Infant/Toddler EI program, the program shall forward the request to ODR immediately to ensure that the mediation is not delayed. Mediation sessions must be held within 10 calendar days following the family's request at a mutually convenient location to the parties of the dispute. Mediation is voluntary on the part of the parents and may not delay or deny a parent the right to a due process hearing.

Participants at the mediation meeting should include all parties involved in the identified dispute, i.e., the family, the Infant/Toddler EI program designee(s), service coordinator, and other members of the child's team, if appropriate. Attorneys are not included as a participant in mediation meetings.

The mediation agreement must be signed by both the parent and a representative of the Infant/Toddler EI Program. The discussions that occur during the mediation process must remain confidential and not used as evidence in any subsequent due process hearing or civil proceedings.

The goal is to reach a mutual agreement, through negotiation as necessary, which is in the best interest of the eligible infant or toddler and his/her family. The mediation agreement shall also specify that the agreements shall be enforceable in any court of competent jurisdiction or in federal district court.

Mediation Schedule:

- Within the group, each individual will be given an opportunity to present their point of view concerning the disagreement.
- The issue(s) will then be discussed with all parties present.
- The impartial mediator will meet privately, in caucus, with each individual/party.
- All parties may be reconvened to discuss possible options or solutions.
- Together the parties discuss the problem(s) and reach a mutually satisfactory agreement. At the meeting, the impartial mediator is responsible for assisting the parties in preparing a written mediation agreement documenting the mutually agreed upon solution or a statement documenting the failure to reach an agreement. The MDE and IFSP and all pertinent information shall be revised in accordance with the agreement. Any additional Early Intervention services resulting from the mediation agreement must be started within 14 days of the amendment date of the IFSP.

The Infant/Toddler EI Program shall forward a copy of the signed agreement to the specified Bureau of Early Intervention Services (BEIS) Advisor and the BEIS Central Office within 48 hours of receiving a copy of the signed agreement.

The Infant/Toddler EI Programs shall contact the BEIS Advisor within 10 calendar days following the mediation to provide the status of the agreement implementation.

The BEIS Advisor will monitor the specified Infant/Toddler EI Program to ensure compliance and implementation of the agreement.

Due Process:

Many of the requirements of IDEA 2004 and the subsequent regulations related to due process procedures are included in Chapter 4226 and shall remain in effect. Additional requirements have been established for parental rights in due process hearing proceedings and convenience of hearings and timelines. As stated in 4226.100 (b)(5) and (6), a parent may obtain a written or electronic transcription of the hearing and a written copy of the findings of fact and decision. ODR shall ensure these materials are provided at no cost to the parent.

The timelines for due process proceedings are established in federal regulations at §303.437 and Chapter 4226.102. Although not permissible previously, a hearing officer may grant a specific extension of the due process hearing beyond the 30 day timeline set forth in regulations at the request of the parent(s) or the Infant/Toddler EI program who are party to the due process hearing.

Any party aggrieved by the findings and decisions issued pursuant to a due process complaint has the right to bring a civil action in State or Federal court.

Individualized Family Service Plan Facilitation:

Individualized Family Service Plan (IFSP) facilitation is a voluntary process that can be utilized when all parties to an IFSP meeting agree that the presence of a neutral third party would help facilitate communication and the successful drafting of the infant/toddler's IFSP. This process is not necessary for most IFSP meetings. It is most often utilized when there is a sense from any of the participants that the issues at the IFSP meeting are creating an impasse. The family can request mediation through the Infant/Toddler Early Intervention program or contact ODR at: 1-800-222-3353 or <http://odr-pa.org/>

NEXT STEPS:

Local Infant/Toddler EI programs shall review the new requirements and update their local procedures to assure compliance.

Comment and questions should be directed to the Office of Child Development and Early Learning, Bureau of Early Intervention Services at 717-346-9320 or ra-ocdintervention@state.pa.us.