



MENTAL RETARDATION BULLETIN

COMMONWEALTH OF PENNSYLVANIA • DEPARTMENT OF PUBLIC WELFARE

ISSUE DATE

August 2, 1999

EFFECTIVE DATE

July 1, 1999

NUMBER

00-99-09

SUBJECT

**EARLY INTERVENTION DUE
PROCESS SYSTEM**

BY

Handwritten signature of Nancy R. Thaler in black ink.

Nancy R. Thaler
Deputy Secretary for Mental Retardation

SCOPE:

County Mental Health/Mental Retardation Administrators
Early Intervention Program Directors

PURPOSE:

The purpose of this bulletin is to clarify the procedures for a due process hearing specified in 55 Pa.Code §§ 4225.101-4225.106, relating to the rights of infants and toddlers from birth to age three and their families through the Early Intervention Program.

BACKGROUND:

The Pennsylvania Early Intervention Program is administered by the Pennsylvania Department of Public Welfare, lead agency in accordance with PA Act 212-1990 and Part C of the Individuals with Disabilities Act (IDEA), P.L. 105-17, amending P.L. 102-119 and P.L. 99-457. Prior to October 1, 1997, Part C was known as Part H. The Office of Mental Retardation (OMR) administers comprehensive early intervention services for infants and toddlers from birth to age three and their families through the 45 county mental health/mental retardation (MH/MR) offices.

The following options are available to parents and accessed through the county MH/MR administrator for resolution of individual child complaints and those that are systemic in nature:

REFER COMMENTS AND QUESTIONS TO:

Appropriate Regional Office of Mental Retardation Early Intervention Coordinator

1. Meeting - A meeting may be scheduled with the county MH/MR administrator at the parent's request to discuss and resolve an issue involving their child. Parents may request this meeting through their service coordinator or they may contact county administrative staff directly. The meeting should be conducted within seven days of the request.
2. Mediation - OMR Bulletin #00-95-11, "Conflict Resolution and Mediation for Infants and Toddlers and Their Families" issued June 15, 1995, describes mediation as a means to resolve individual child complaints. The county MH/MR administrator may utilize the services of the Pennsylvania Special Education Mediation Service (PaSEMS) funded by the OMR. Private mediation services funded through county allocations may also be utilized at the discretion of the county MH/MR administrator.
3. System Complaint - OMR Bulletin #00-95-10, "Part H/PA Act 212-1990, Non-Compliance Resolution Process" issued June 15, 1995, provides for filing an alleged violation of state or federal laws or regulations through the OMR regional office. A state resolution of a systems complaint may be appealed to the U.S. Secretary of Education.
4. Due Process Hearing - A process for resolution of early intervention disputes described in this bulletin.

A parent may choose any, some or all of the above options to raise a complaint. The choice of any one option does not preclude the parent from choosing any other option, nor does the parent have to exhaust any one option in order to utilize another.

The county MH/MR administrator has overall responsibility for ensuring that parents are informed of the rights and procedural safeguards under the early intervention system. The administrator may delegate these functions to a service coordinator.

DISCUSSION:

Parents may request a due process hearing when disagreements arise regarding a child's eligibility, type, amount or location of services (natural environments), or other applicable component of the early intervention system. All hearings will be conducted by the Right to Education Office (REO), 6340 Flank Drive, Suite 600, Harrisburg, PA 17112; 1-800-222-3353. The REO is an impartial entity and the hearing officers are trained and knowledgeable on the requirements of Part C. The due process hearing is intended to reach a resolution in a single proceeding.

PROCEDURES:

A. Parents will have the following rights related to the due process hearing.

- (1) - Parents will be apprised of rights and protections including confidentiality under the laws in language understood by the parents including preferred mode of communication. Discussions of rights will occur during an initial meeting, a screening appointment, all Individualized Family Service Plan (IFSP) meetings, all notices of a change in service, follow up tracking activity, and at the parent's request.
- (2) Parents will be given a copy of the brochure, A Family's Introduction to Early Intervention in PA and other resource materials describing procedural safeguards. To ensure that parents receive information and that the rights and protections have been discussed, the service coordinator will use the PARENTS RIGHTS AGREEMENT (attachment). This agreement must be completed for each child referred for services, and at each time the parent(s) meets in any of the settings listed in PROCEDURES, A. 1 above. A supply of the attached form may be printed or copied by the local programs as needed.
- (3) Parents will receive written notification before the completion of any evaluation referral or arrangement for services or when an agency determines further evaluation and services are unnecessary, etc. Written notices are also required to notify families of changes, including cessation of the services or activities listed on the IFSP or screening/tracking service plan.
- (4) Parents have the right to accept or decline services. The rejection of one service does not jeopardize other early intervention services or activities. During a child/family resolution process the services or activities not under dispute will be initiated or continued. The PARENTS RIGHTS AGREEMENT is used to specify parent choice.
- (5) Parents have the right to an independent child evaluation at no cost to the family when parents disagree with the evaluation obtained through the county program and it is needed to assist in the resolution of a disagreement or dispute. Funding for the evaluation will be the responsibility of the county MH/MR administrator through local resources.

B. Due process hearing requests will be made as follows:

- (1) A request for a due process hearing must be made by parents to the county MH/MR administrator. PARENT is defined as a biological or adoptive mother or father, a legal guardian, a person acting as a parent such as a stepparent or grandparent or a surrogate parent who has been appointed to act for the parent(s).
- (2) A written request may be submitted by the parent(s) to the county MH/MR administrator by use of the "Due Process Hearing Request" form (attachment). Oral requests will also be accepted through direct contact with the county MH/MR administrator or representative, including the service coordinator.
- (3) County MH/MR administrators may request a due process hearing by directly submitting a written request to the REO.

C. The county MH/MR program will have the following responsibilities:

- (1) The county MH/MR administrator or designee must obtain the parent signature within two (2) working days following the date of the oral request. A supply of the attached "Due Process Hearing Request" form may be printed or copied by the local programs as needed.
- (2) The hearing request form must be submitted to the REO by the county MH/MR administrator within three (3) calendar days commencing on the date of the written parental request.

D. The Right to Education office will have the following responsibilities:

- (1) Upon receipt of the "Due Process Hearing Request" form, the REO will schedule the hearing at a reasonably convenient time for the concerned parties. A delay or postponement of a hearing shall occur only under extenuating circumstances and be granted only by the hearing officer. The reason(s) shall be documented in writing with notification to the involved parties.
- (2) The REO shall offer pre-hearing support and technical assistance independent of any assistance offered by the County MH/MR programs.
- (3) A hearing officer will conduct a hearing and render a decision within a 30 calendar day period and prepare a written report. The timeframe commences on the date the parent(s) signature is obtained on the written hearing request form.

- (4) The REO will arrange for an independent child evaluation at no cost to the family to assist in the resolution of a dispute.
- (5) The REO will notify all of the involved parties when a parent withdraws a hearing request.
- (6) Copies of the final hearing officer's decision and report will be submitted to the involved parties including the OMR regional office.
- (7) The hearing officer's decision and report will contain the following notice:

This decision is final unless it is appealed. Any party aggrieved by this decision may appeal to State or Federal Court.

A party wishing to appeal to State Court must file a Petition for Review in the Commonwealth Court of Pennsylvania within 30 days of the date of this decision. In accordance with Pa.R.App.P. 1514, a copy of any appeal to the Commonwealth Court must be served on the Department of Public Welfare at the following address: Department of Public Welfare, Office of Legal Counsel, Room 309 Health and Welfare Building, Harrisburg, PA 17120.

A party wishing to appeal to Federal Court may bring a civil action in a district court of the United States without regard to the amount in controversy. 20 U.S.C. §1439(a)(1).

The failure to appeal this decision concerning a particular early intervention service at issue will constitute agreement on the propriety of the service. This decision must be implemented accordingly.

During any appeal to court, the county MH/MR program must provide all services ordered by the hearing officer which were requested by the parent(s). In addition the county MH/MR program must continue the services currently being provided, unless the parent(s) and the county MH/MR program otherwise agree.

E. The county MH/MR program will have the following responsibility while proceedings are pending:

During the pendency of any proceeding or action involving a complaint by the parent(s) of an infant or toddler with a disability, including an appeal to State or Federal Court, the county MH/MR program must continue the services currently being provided until the child turns three years of age, unless the parent(s) and the county MH/MR

program otherwise agree. At the time the child turns three years of age, programmatic and fiscal responsibility for the child's pendent placement shall be with the Mutually Agreed Upon Written Arrangement (MAWA) agency. If the dispute concerns an initial application for services, the county MH/MR program must provide the services not in dispute. Services that are not the subject of the hearing officer's decision shall not be affected by it.

The decision and report of the hearing officer constitutes the position of the State agency for the purposes of 20 U.S.C. §1439(b). Therefore, during the pendency of any appeal to the court, the county MH/MR program must provide all services ordered by the hearing officer which were requested or agreed to by the parent(s) until the child turns three years of age. At the time the child turns three years of age, programmatic and fiscal responsibility for the child's pendent placement shall be with the MAWA agency.

If an infant or toddler with a disability approaches or turns three years of age during the pendency of any proceeding or action involving a complaint by the parent(s), including an appeal to State or Federal Court, the county MH/MR program must plan for and implement the transition of the infant or toddler into other appropriate services, which may include the early intervention program operated by the MAWA agency.

F. Nothing in this Bulletin shall be construed to prohibit the county MH/MR program from seeking reimbursement for provision of services from the appropriate entity.

This Bulletin replaces and supersedes MR Bulletin 00-95-24.

Attachments

Parents Rights Agreement
Due Process Hearing Request

RIGHT TO EDUCATION OFFICE

6340 FLANK DRIVE/SUITE 600 • HARRISBURG PA 17112 • 1-800-222-3353 PA only

DEPARTMENT OF PUBLIC WELFARE EARLY INTERVENTION PROGRAM DUE PROCESS REQUEST (Completed by County Office)

A-HEARING REQUEST FORM IS SUBMITTED TO THE REO WITHIN 3 CALENDAR DAYS FROM THE DATE OF WRITTEN REQUEST. DOCUMENTATION SUCH AS A COPY OF THE IFSP (DRAFT ACCEPTED) OR EVALUATION, ETC. SHALL BE ATTACHED TO THIS FORM. SUBMIT COPIES OF REQUEST TO PARENT(S) AND OMR REGIONAL OFFICE. MAINTAIN A FILE COPY IN MH/MR OFFICE.

Date of Written Request: _____

Name of Child: _____

County MH/MR Office: _____

County MH/MR Contact Person: _____

Title: _____

Address: _____

Telephone No: _____ Fax No: _____

County Legal Representative (if applicable): _____

Address: _____

Telephone No: _____ Fax No: _____

Schedule hearing with: _____ County MH/MR Person OR _____ Legal Representative

Parent(s) Name: _____

Address: _____

Telephone No: (work) _____ (home) _____

Parents' Representative Name (or insert "None"): _____

Title: _____

Address: _____

Telephone No: _____ Fax No: _____

Schedule hearing with: _____ Parents OR _____ Representative

Parents Rights Agreement

Event/Reason for Agreement	
Name of Child _____	Date _____
<p>Yes N/A</p> <p><input type="checkbox"/> <input type="checkbox"/> I/we participated in the meeting(s) to discuss, plan, and implement early intervention services or screening/tracking activities.</p> <p><input type="checkbox"/> <input type="checkbox"/> I/we received information explaining early intervention, rights and procedural safeguards.</p> <p><input type="checkbox"/> <input type="checkbox"/> I/we understand that when a child is eligible, an evaluation should be completed (if a current evaluation is not available) and an IFSP meeting held within 45 days from the date of referral to the county MH/MR.</p> <p><input type="checkbox"/> <input type="checkbox"/> I/we understand that parents have the right to accept or decline any or all of the proposed services and activities.</p> <p><input type="checkbox"/> <input type="checkbox"/> I have been informed that information gathered is confidential (Family Educational Rights and Privacy Act).</p> <p>I/we request:</p> <p><input type="checkbox"/> <input type="checkbox"/> Another meeting to continue to discuss the issues presented today.</p> <p><input type="checkbox"/> <input type="checkbox"/> All screening and/or tracking activities.</p> <p><input type="checkbox"/> <input type="checkbox"/> All activities and services listed on the IFSP.</p> <p><input type="checkbox"/> <input type="checkbox"/> All recommended activities and services be delayed.</p> <p><input type="checkbox"/> <input type="checkbox"/> Only the following IFSP listed activities or services to start:</p> <p>_____</p> <p>_____</p> <p>_____</p>	
<p>I/we are dissatisfied with the proposed services and activities and request:</p> <p><input type="checkbox"/> <input type="checkbox"/> A discussion with the county MH/MR administrator.</p> <p><input type="checkbox"/> <input type="checkbox"/> A mediation session conducted by Pennsylvania Special Education Mediation Services (PaSEMS).</p> <p><input type="checkbox"/> <input type="checkbox"/> A due process hearing conducted by the Right to Education Office (REO).</p>	
<p>Parent Signature(s) _____</p> <p style="text-align: center;">_____</p>	

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Parent Signature(s) _____ _____	