



RESOLVING DISPUTES IN THE EARLY INTERVENTION SYSTEM FOR INFANTS AND TODDLERS UNDER AGE THREE

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral, or contact an attorney of your choice.

CONSIDER MEETING WITH THE PROGRAM ADMINISTRATOR

A parent can contact her service coordinator whenever she has a question or concern about her child's early intervention program. In addition, the parent can herself or through the service coordinator request a meeting with the head of the early intervention program. The meeting must be held within seven (7) calendar days. If an agreement is reached at the meeting, the agreement should be listed on the child's Individual Family Service Plan (IFSP) so that it will be legally enforceable. The parent can skip the meeting and file a complaint or request a due process hearing (more about these options below).

ANOTHER OPTION IS FILING A "COMPLAINT"

A parent, advocate, or any other individual or organization may file a complaint with the Pennsylvania Office of Child Development and Early Learning (OCDEL) if she believes that the early intervention agency, the early intervention provider, or the state has violated her child's legal rights. For example, if the provider has not given the child the services listed in the IFSP or the early intervention agency has not evaluated the child within the 45 calendar day deadline, the parent can file a complaint to fix the problem and get other help to

make up for the legal violation. A complaint can also be filed about a group of children,

HOW DO I "FILE" A COMPLAINT?

The parent can call OCDEL at 717-346-9320 or write to OCDEL, Bureau of Early Intervention Services, Departments of Education and Public Welfare, 6th Floor, 333 Market Street, Harrisburg, PA 17126-0333. The complaint should state what law has been broken and the facts on which the complaint is based. A complaint can also include violations of the law that happened up to a year earlier, or longer if the violation is still happening. A parent can go back three years if she is asking the early intervention agency for "reimbursement" or "compensatory education." Reimbursement is when the agency pays the parent back for money she had to pay because the early intervention agency or a provider broke the law. Compensatory education is additional services the agency is required to provide to make up for its failure to give the child required services in the past.

WHAT HAPPENS AFTER THE COMPLAINT HAS BEEN FILED?

OCDEL has 60 calendar days to investigate the Complaint and issue a written decision. The parent can submit additional evidence, in writing or by talking with the investigator. Sometimes OCDEL will visit the early intervention agency or where the child is receiving early intervention services as part of the investigation.

If OCDEL finds that the child's legal rights have been violated, it must make sure there is a plan in place to correct the problem within 30 days. Again, in addition to ordering the agency to fix the problem, OCDEL can order the agency to reimburse the parent or provide the child with extra services to make up for past problems.

WHEN DOES IT MAKE SENSE TO GO TO MEDIATION?

Families can use mediation any time there is a disagreement between a parent and an early intervention agency. Mediation is an informal "no cost" option that often resolves a problem faster than the more formal complaint and hearing procedures. Mediators are not employees of the early intervention agency.

WHAT IS MEDIATION?

In mediation, both sides agree to attend a meeting with a trained mediator. Mediators do not make decisions, but rather help the parties agree on some or all of the issues. The mediation session must be scheduled within 10 calendar days of the parent's request and must be held at a location convenient to the parties. Any agreements must be included in a written mediation agreement. Make sure that the agreements reached are also included in the child's IFSP. If the early intervention agency doesn't live up to its agreement, you can file a complaint with OCDEL and ask OCDEL to require the agency to fulfill its promises. Mediation sessions are confidential; neither party can use anything that is said at a mediation session in a later hearing or court proceeding.

HOW DO I REQUEST MEDIATION?

You can request mediation or learn more about mediation by calling the Office of Dispute Resolution (ODR) at 800-222-3353 or by visiting the ODR website at <http://odr.pattan.net>.

WHAT IS IFSP FACILITATION?

Sometimes the early intervention agency and the parent both want an impartial person to attend an IFSP meeting to help them reach agreement on an IFSP or other matters. The parent can get a form to request IFSP facilitation from the service coordinator or from <http://odr.pattan.net>.

WHEN SHOULD I ASK FOR A HEARING?

Families can ask for a due process hearing before an impartial Hearing Officer any time there is a disagreement about whether a child is eligible for early intervention services, what types of services the child needs and how often she needs them, whether the service is being provided in the "natural environment," and more. In general, if the early intervention agency and the parents disagree about what a child needs or where she should get services, the parent can ask a Hearing Officer to decide the dispute.

HOW DO I REQUEST A DUE PROCESS HEARING?

A family can request a hearing by asking the Service Coordinator to arrange one or by calling the Office of Dispute Resolution (ODR) at 800-222-3353. The complaint form is at <http://odr.pattan.net/consultline/ComplaintInformationPacketandForm.aspx>. The hearing officer will set a date, but that date can be rearranged if needed. A parent is entitled to a "no cost" independent evaluation if she disagrees with the early intervention agency's evaluation. The independent evaluation is needed to resolve the dispute.

WHAT HAPPENS TO MY CHILD'S SERVICE DURING THE HEARING PROCESS?

Once you request a hearing, your child has the right to continue to receive all of the early intervention services listed in the last agreed-upon IFSP until there is a final decision in the case. The early intervention agency must also give the child any services the parties agree are needed even if they weren't already part of your child's IFSP.

WHAT HAPPENS AT A HEARING?

The hearing must be held at a time and place that is reasonably convenient to the parent. A parent can be represented by an attorney and can bring other people with special knowledge or training about the child or about early intervention to advise her. The parent (and the early intervention agency) can present "evidence" (for example, testimony from parents or experts or progress or medical reports). Remember, you must share with the other side (and they with you) any evidence that you want to present at least five (5) calendar days before the hearing; otherwise the Hearing Officer may not let you present it at the hearing. You can also ask questions of the other side's witnesses (called "cross-examination"). You are also entitled to a written or electronic transcript of the hearing.

The Hearing Officer must send you and the agency a written decision with findings of facts and reasoning no later than 30 calendar days after receiving your

request for a hearing. Either party can file an appeal from the Hearing Officer's decision to a court. It is important to understand that - unlike the situation with preschoolers and school-aged students - even if the parent is successful in persuading a Hearing Officer or a judge that the family is right, the family still cannot force the early intervention agency to reimburse them for their attorneys' fees. But the family may be able to get back money they paid to provide services the agency should have provided, and may be entitled to extra or "compensatory" education services.

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