

101 CMR: EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

101 CMR 17.00: UNIFIED PLANNING TEAMS

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17.01: Regulatory Authority

EOHHS is authorized by M.G.L. c. 6A, § 16R to promulgate regulations in collaboration with the Commonwealth of Massachusetts Department of Elementary and Secondary Education (DESE) and the Commonwealth of Massachusetts Department of Early Education and Care (DEEC) about geographically based interagency review teams that will collaborate when a child presents a complex case, as defined in 101 CMR 17.03.

17.02: Purpose

The purpose of 101 CMR 17.00 is to establish geographically based Unified Planning Teams, which will review complex cases, as defined in 101 CMR 17.03.

17.03: Definition of Terms

The following terms used in 101 CMR 17.00 have the meanings given in 101 CMR 17.03 unless the context clearly requires a different meaning.

BSEA – the Bureau of Special Education Appeals is the entity with jurisdiction under M.G.L. c. 71B and the federal Individuals with Disabilities Education Act to mediate and adjudicate disputes related to the provision of special education and related services to children with disabilities.

Child – a person under the age of 22 years.

Complex Case – a circumstance in which a child is involved with at least three state agencies. Involvement with a state agency consists of

- (1) being determined eligible to receive services by a state agency;
- (2) having an application for services pending with a state agency;
- (3) being placed in DYS custody or supervision by a juvenile court in the Commonwealth of Massachusetts on bail or commitment orders; or
- (4) being involved with DCF pursuant to M.G.L. Chapters 18B and 119, or their corresponding regulations.

DALA – the Division of Administrative Law Appeals.

DCF – the Commonwealth of Massachusetts Department of Children and Families, an agency within EOHHS.

DEEC – the Commonwealth of Massachusetts Department of Early Education and Care.

DESE – the Commonwealth of Massachusetts Department of Elementary and Secondary Education.

DMH – the Commonwealth of Massachusetts Department of Mental Health, an agency within EOHHS.

DYS – the Commonwealth of Massachusetts Department of Youth Services, an agency within EOHHS.

EOHHS – the Commonwealth of Massachusetts Executive Office of Health and Human Services.

EOHHS State Agency – the agencies described in M.G.L. c. 6A, §16 as within EOHHS, including MassHealth.

IDEA – the federal Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq. The IDEA and M.G.L. c. 71B govern the provision of special education to eligible Massachusetts students.

Legal Custodian – a parent, legal guardian, or an individual or entity with the legal responsibility to care for the child and the legal authority to authorize the release of information about the child.

Local Educational Authority (LEA) – the school district or charter school responsible for certain children pursuant to 603 CMR 28.10.

Secretary – the Secretary of EOHHS.

Unified Planning Team (UPT) – a geographically based interagency review team consisting of representatives from EOHHS and EOHHS state agencies, DESE, and DEEC, if the child is involved with such agency as defined in the definition of complex case in 101 CMR 17.03 and based on the needs of the child.

17.04: Referrals

(A) Parties That May Refer Cases for Review. A child's case may be referred for review by a UPT by

- (1) a justice of a juvenile court in the Commonwealth of Massachusetts;
- (2) a state agency, including DCF pursuant to M.G.L. c. 18B, § 23 or DMH pursuant to M.G.L. c. 19, § 24;
- (3) the child's legal custodian; or
- (4) the child, if authorized by law.

(B) Referral Requirements. Referrals must be submitted in writing on a form developed, and amended as needed, by EOHHS and must include

- (1) consent from the legal custodian or, if authorized by law, the child, authorizing the UPT, the Secretary, and DALA to
 - (a) obtain materials related to the child's case, including but not limited to medical records and any evaluation or assessment of the child; and
 - (b) discuss these materials related to the child's case with one another and with other individuals directly addressing matters related to the child's case;
- (2) evidence that the child presents a complex case by naming the three or more state agencies with which the child is involved; and
- (3) the reason for the referral.

(C) Withdrawal of Referral. A referral for review may be withdrawn by the legal custodian or, if authorized by law, the child at any time, by notifying EOHHS in writing.

17.05: Eligibility for Review

(A) A child's case is eligible for review by a UPT if the child presents a complex case as defined in 101 CMR 17.03 and the consents required by 101 CMR 17.04(B) have been provided to EOHHS.

(B) A child's case is ineligible for review by a UPT if the child has an appeal pending with an EOHHS state agency or has a mediation or hearing pending with the BSEA (see 603 CMR 28.08(3)), and the subject of such appeal, mediation, or hearing is substantially related to the reason that the child's case is being referred for review by a UPT. Once such appeal, mediation, or hearing is completed, the child's case may again be referred for review.

(C) The legal custodian or, if authorized by law, the child will be notified in writing whether such child's case is eligible for review by a UPT and, if applicable, will include a reason for ineligibility. Such notification will also be provided to the referral source, if different, from 101 CMR 17.04(A)(1) through (4).

17.06: Unified Planning Team Review Process

- (A) The UPT Review. A review by a UPT includes, but is not limited to, UPT meetings described in 101 CMR 17.06 and a review by a UPT of materials relevant to the child's case. To assist with its review, a UPT may
- (1) request that the child or legal custodian initiate the appropriate process offered by a specific state agency to determine whether the child is eligible for services provided by such state agency; and
 - (2) collect and review relevant materials, including, but not limited to, medical records and any evaluations and assessments of the child.
- (B) UPT Meeting Proposed Participants. The UPT will
- (1) notify the legal custodian or, if authorized by law, the child of the individuals and entities it proposes to invite to attend and participate in the UPT meeting;
 - (a) The UPT will include the following as proposed meeting participants, depending on the needs of the child:
 - (i) representatives of EOHHS state agencies and DEEC, including any representatives who are members of the UPT;
 - (ii) representatives of DESE, if the UPT meeting is for a child who receives special education services and resides in a facility operated by or under contract with DMH, DYS, county houses of corrections, or the Commonwealth of Massachusetts Department of Public Health, as appropriate;
 - (iii) the child's legal custodian;
 - (iv) the child, if the legal custodian agrees or if the child is authorized by law to elect to attend;
 - (v) relevant service providers; and
 - (vi) representatives of the LEA, juvenile probation, and juvenile courts.
 - (b) The UPT may include as proposed meeting participants, if it deems appropriate, other individuals who may be able to provide additional information related to the reason why the child's case was referred for UPT review;
 - (2) request the names and contact information for the additional participants that the legal custodian or, if authorized by law, the child would like to be invited to attend and participate in the UPT meeting; and
 - (3) request consent from the legal custodian or, if authorized by law, the child to invite all proposed participants, except those who are members of the UPT, to attend and participate in the UPT meeting.
- (C) Notification of Meeting. At least five business days before the UPT meeting, all proposed participants in the UPT meeting are notified of the date, time, and location of the meeting and the reason that the referral source gave for referring the child's case.
- (D) Meeting Protocol. The UPT meeting is led by an EOHHS state agency designee, who may impose guidelines for the meeting.
- (E) Post-Meeting Activities. No later than 30 days after the UPT meeting, the UPT completes its review of the child's case and attempts to reach a consensus about the services provided by state agencies that are appropriate for the child, the state agency or agencies that will be responsible for providing those services, and, if appropriate, the coordination of those services.

(1) The UPT first considers any existing services provided by state agencies that the child is currently receiving and whether those services are appropriate and adequate to meet the child's needs. The UPT also considers the current coordination of any existing services and possible improvements to such coordination.

(2) The UPT considers services that might be available from a state agency where the child's application or other process for eligibility is pending, but does not make eligibility determinations for any state agency. The UPT relies on the applicable state agency's eligibility determination of the child for services provided by such state agency. No state agency is required to provide any services for a child who has not been determined eligible by that state agency.

(F) UPT Authority.

(1) The UPT does not have the authority to plan or determine services for a child that the state agency would not be required to provide under its applicable statutes or regulations or to otherwise alter agency policy and practices relating to eligibility for and delivery of services, including activities related to the maintenance of waiting lists.

(2) The UPT does not have the authority to plan or determine the special education services to which a child may be entitled under IDEA, 20 U.S.C. §§1400 et seq. and M.G.L. c. 71B, or to supersede, amend, modify, or otherwise affect the authority of the BSEA to mediate or adjudicate special education disputes as provided in §1415 of the IDEA, M.G.L. c. 71B, §3, and 603 CMR 28.08(3).

(G) UPT Written Report.

(1) No later than 30 days after the UPT completes its review, the UPT distributes to the individuals listed in 101 CMR 17.06(G)(2) a written report of its consensus determinations and recommendations, which includes

- (a) a list of the state agencies and other participants in the UPT meeting;
- (b) the appropriate and available state agency services determined or recommended by the UPT to meet the child's needs, including those that the child is already receiving;
- (c) a determination or recommendation of which state agency the UPT recommends be responsible for providing those services; and
- (d) if appropriate, how such services will be coordinated.

(2) The UPT provides this report to the legal custodian or, if authorized by law, the child, as well as to the representatives of the state agencies who participated in the review.

(H) Resolution Process When Consensus Cannot Be Reached. If the UPT is unable to reach a consensus within 30 days, the UPT refers the matter for resolution to the regional directors, if any, of the respective state agencies represented on the UPT or to other staff identified by such state agencies.

(1) The regional directors or other identified staff meet within 10 business days of receiving the referral from a UPT and issue their decision within three business days thereafter. A decision by regional directors or other identified staff is considered the decision of the UPT for the purposes of 101 CMR 17.07.

(2) If the regional directors or other identified staff are unable to reach a consensus within the timeframe described in 101 CMR 17.06(H)(1), and the disagreement involves matters solely within the purview of EOHHS, the UPT notifies the Secretary or the Secretary's designee, who renders a decision within 30 days of such notice.

17.07: Appeal Process

(A) Right to Appeal to DALA. If the legal custodian or, if authorized by law, the child disagrees with a decision of the UPT or Secretary, such individual may file an appeal with DALA, which conducts an adjudicatory proceeding in accordance with 801 CMR 1.01 and orders any necessary relief consistent with state or federal law.

(B) Timeliness of Appeal. Any appeal to DALA must be filed within 30 days of receipt of the UPT's written report or the Secretary's decision, as applicable.

(C) Grounds for Appeal. Permissible grounds for an appeal to DALA under 101 CMR 17.07 are

(1) a dispute about the determination that the child is ineligible for review by a UPT; and

(2) a dispute about the determination or recommendation by a UPT or the Secretary as to which EOHHS state agency services appropriately meet the child's needs, subject to the limitations in 101 CMR 17.07(D).

(D) Nonappealable Actions. The following actions do not constitute grounds for an appeal to DALA under 101 CMR 17.07:

(1) a determination by a state agency of

(a) ineligibility for services provided by a state agency;

(b) unavailability of any service that the state agency is not required to provide under its applicable statutes or regulations; or

(c) the applicability of agency policy and practices relating to eligibility for and delivery of services, including activities related to the maintenance of waiting lists;

(2) appeals related to any MassHealth action. All such appeals must be made to the Office of Medicaid Board of Hearings pursuant to 130 CMR 610.000. For a child enrolled in a MassHealth managed care plan, such appeals must be made to the managed care plan directly, subject to review at the Office of Medicaid Board of Hearings in accordance with the provisions of 130 CMR 610.000. A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency and is not subject to appeal to the Office of Medicaid Board of Hearings or DALA; and

(3) appeals related to a dispute concerning the free appropriate public education to which a child is entitled under M.G.L. c. 71B and the IDEA. All such appeals must be made to the BSEA as provided in §1415 of the IDEA, M.G.L. c. 71B, and 603 CMR 28.08(3).

17.08: Implementation of Services

The state agencies represented on a UPT works to implement in a reasonable amount of time any authorized decision with respect to services or coordination made by a UPT, regional directors, or the Secretary.

17.09: Confidentiality

(A) Access to Confidential Information. Notwithstanding M.G.L. chapters 66A, 112, and 119 or any other law related to the confidentiality of personal data, the UPT, Secretary, and DALA have access to and may discuss materials related to a child's case with one another and with other individuals directly addressing matters related to the child's case while the case is under review after

- (1) the legal custodian or, if authorized by law, the child has consented in writing; and
- (2) those having access agree in writing to keep the materials confidential.

(B) Disposition of Confidential Information. Once a UPT review is complete and the timeline for all potential legal and administrative appeals has been exhausted, all materials are returned to the originating source, or, with consent of the originating source, all materials are destroyed to the extent authorized by state law.

(C) Redaction of Personal Information. Any written report produced by a UPT and any written decision produced by DALA is redacted in accordance with the Interim Guidelines for the Protection of Personal Identifying Information in Publicly Accessible Court Documents.

REGULATORY AUTHORITY

101 CMR 17.00: M.G.L. c. 6A, §16R.