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**Information on Requesting an Early Intervention Due Process Hearing**

**Frequently Asked Questions**

Massachusetts Early Intervention (EI) services support a young child’s learning through meaningful, every day activities. Early intervention services are provided differently than services provided in a hospital or outpatient therapy center. Services are based on developmentally appropriate practice, current research and Part C of the Individuals with Disabilities Education Act.

Massachusetts Early Intervention focuses on three concepts in our work with families:

1. Infants and toddlers learn best through repeated practice during daily activities.
2. Parents and caregivers have the greatest impact on a child’s progress.
3. Early Intervention supports you and your family’s relationship with your child.

**What is a due process hearing?** A due process hearing is a formal process where a hearing officer makes a decision about a disagreement between a parent and an EI program. The disagreement may be related to a child’s eligibility for EI services, the types of EI services, or something written in the child’s record. The decision is based on the arguments, testimony, and evidence presented by both sides.

**What can I do if I have a concern or disagree with the program?** You are an important member of your child’s early intervention services. As a parent, you may have concerns about how the EI program is providing services. If you find that you have a concern, problem or disagreement, you have options:

* Have an Individualized Family Service Plan (IFSP) meeting. Review the entire IFSP with other members of the team. What are your concerns for your child? Do your concerns and priorities connect with your outcomes? Is your child making progress? Are the activities and services still appropriate or are changes needed?
* Talk about your concerns with your service coordinator. Let them know what you what your concerns are.
* Speak with the Program Director. They might be able to address the concern quickly.
* Call the Department of Public Health Division for Early Intervention. A staff person can provide you more information about your rights and options.
* Request mediation: Mediation is a voluntary process. Parents and members of the EI team agree to talk about the issue with a neutral person (a mediator). Mediation helps parents and the EI team come up with new ideas to negotiate an agreement.
* Request a due process hearing: There are times when parents and the EI team cannot agree. Parents have the right to request a due process hearing even if they have not tried mediation.

**What is the difference between a formal complaint, mediation and a due process hearing?**

A **formal complaint** investigation is a process used to determine if an EI program followed a requirement procedure, policy or timeline. The decision about whether or not a violation occurred is made by DPH.

Some examples of violations include:

* If the program did not allow you to see your child’s records
* If the program did not provide you with prior written notice of an action the program proposed or refused to take related to your child’s IFSP services
* If the program did not complete an evaluation/assessment within 45-days of referral

**Mediation** is a process used to try to resolve a disagreement about a child’s eligibility for EI services or the types of EI services by working with a trained mediator. The mediator will clarify the issues and encourage both sides to think about new ideas to negotiate an agreement. The EI program and parent make their own decisions. The mediator does not make a decision about the disagreement.

A **due process hearing** is a process used to resolve a disagreement about a child’s eligibility for EI services or the types of EI services. A due process hearing can also resolve a disagreement about what is in a child’s EI record. A due process hearing can address some procedural and timeline issues if they involve providing appropriate services. The hearing officer will clarify which issue(s) are heard at the hearing. The decision about the disagreement is made by the hearing officer.

* Some examples of disagreements decided at a due process hearing include: If you and the EI program do not agree about the type(s) of EI services or how often the services(s) are provided.
* If the EI program includes information in your child’s record that you believe is inaccurate or misleading.

**Can I file a formal complaint, request mediation and a due process hearing all at the same time?**

Yes. Mediation is available within 14-days and will not delay a hearing or a complaint investigation unless both sides agree to a delay.

If you file a formal complaint and a hearing request at the same time, any issue that is part of the hearing cannot be investigated. The hearing officer will decide which issue(s) are part of the hearing and which issue(s) can be investigated as a formal complaint.

**Who can ask for a hearing?**

A parent may file a request for a due process hearing.

**How do I request a due process hearing?**

DPH has a form that you can complete and mail, fax, or email. The form and where to send it can be found here. You may use this form or write your own letter. Your letter must include:

* your contact information
* the name and contact information of the child
* the name of the EI program
* describe the disagreement
* the facts associated with the violation
* a proposal to resolve the complaint (if you know of one)

It must also be:

* signed by you
* filed within two (2) years of when the disagreement happened. This timeline may be extended if a parent was prevented from requesting a hearing. For example, if the EI program did not inform the parent of the right to request a hearing or did not provide a copy of the family rights notice.

**Important:** You must send a copy of the hearing request to the EI program and DPH.

**What happens after I file a request for a hearing?** You will receive a letter that DPH received your complaint. If you do not receive a letter, please call Kathleen Amaral at 508-454-2007.

A hearing officer will contact you and the EI program to set up a pre-hearing conference call. The hearing officer will clarify the issues that will be part of the hearing, explain the process and schedule hearing dates.

You may choose to have someone (an attorney) represent you and your child at the hearing or you may represent yourself. DPH will provide you with a list of low-cost advocacy services.

The Bureau of Special Education Appeals has information for parents who decide to represent themselves. This information explains the process and what you need to do to prepare for the hearing.

**What happens at a due process hearing?**

A due process hearing is a formal process where each side makes an opening statement, presents their argument, calls and cross-examines witnesses, and submits documents as evidence to a hearing officer. The hearing officer makes a decision about the disagreement.

You will need to prepare for the hearing. You will need to decide if someone will represent you. You will take part in pre-hearing conferences calls, make copies of documents, and prepare a question list and your arguments.

**What are the qualifications of the hearing officer?**

The hearing officers are attorneys from the Bureau of Special Education Appeals. They are not employed by DPH or the EI program. They have experience conducting hearings and knowledge of the Individuals with Disabilities Education Act. Their role is to listen and review all the evidence from each side and make a decision on the disagreement.

**How long does the process take?**

The hearing officer will hold the hearing and send a written decision 30-days from the date you send the request to DPH and the EI program. The hearing officer may extend the 30-day timeline if you or the program ask for an extension.

**What about my child’s IFSP services?** **Do they stop because of the hearing?**

No. The IFSP services that you gave written consent for are provided unless you and the EI team agree to something different. This is known as “stay put”. It means that the child’s last agreed upon services will “stay put” (not change) until the hearing officer issues a decision.

**Do I have other rights?**

Yes. As a parent, you have the right to:

* Present evidence
* Question and cross-examine witnesses
* Only allow evidence provided to you at least 5 days before the hearing
* Receive a written or electronic copy transcript upon request
* Choose to have an attorney or advocate represent you and your child
* Represent yourself and your child (known as “pro se”)
* Receive a written decision from the hearing officer
* File an appeal in state or federal court within 90 days of the decision if you disagree with the decision
* Have the hearing open or closed to the public
* Have your child who is the subject of the hearing at the hearing
* Have an interpreter if needed.

**Can I appeal the decision if I do not agree with the report?**

Yes. You must file an appeal in state court within 90-days of receiving the decision.

**Can I withdraw my complaint after I have filed it?** Yes. You must contact the hearing officer to tell him/her of your decision to withdraw the hearing request. Your request to withdraw must happen before the hearing officer’s decision is sent.

**Do you have other questions?**

If you have questions or would like more information about your family rights, contact Kathleen Amaral at 508-454-2007 or kathleen.a.amaral@mass.gov

For a copy of the DPH Early Intervention Family Rights Notice, click here:

<https://www.mass.gov/lists/early-intervention-family-rights-and-procedural-safeguards>