

**Announcement
EI-25 #03**



Pennsylvania
**Office of Child Development
and Early Learning**

Pennsylvania Office of Child Development and Early Learning
Bureau of Early Intervention Services and Family Supports

Issue Date: 09/17/2025

Effective Date: 09/17/2025

Subject: Mediation, Due Process, and Individualized Family Service Plan/Individualized Education Program (IFSP/IEP) Facilitation Procedures for Infant Toddler and Preschool Early Intervention

To: Infant Toddler Early Intervention Leadership
Preschool Early Intervention Leadership

From:

Shante' A. Brown

Deputy Secretary, Office of Child Development & Early Learning

PURPOSE

The purpose of this announcement is to provide guidance to both Infant Toddler and Preschool Early Intervention programs on Parts B and C of the Individuals with Disabilities Education Act's (IDEA's) requirements related to mediation and due process. Individualized Family Service Plan (IFSP) and Individualized Education Program (IEP) facilitation is available but not required. This announcement replaces EI-12 # 05: *Mediation, Due Process, and IFSP Facilitation Procedures for Infant/Toddler Early Intervention*, which is now obsolete.

BACKGROUND

The Pennsylvania Early Intervention (EI) Program is implemented in compliance with the IDEA (20 U.S.C. 1401 et seq.) and its implementing regulations (34 CFR Parts 300 and 303), the Early Intervention Services System Act (Pennsylvania Act 212 of 1990), the Early Intervention Services state regulations (55 Pa. Code Chapter 4226), and the Special Education Services and Programs regulations (22 Pa. Code Chapter 14).

DISCUSSION

The Pennsylvania Departments of Education and Human Services, Office of Child Development and Early Learning (OCDEL) has contracted with the Office for Dispute Resolution (ODR) to provide mediation, due process, and IFSP/IEP facilitation services. ODR has a staff of trained, impartial mediators, hearing officers, and facilitators who are assigned to conduct mediation, due process, and IFSP/IEP facilitation at no cost to the family.

Infant Toddler and Preschool EI Programs

Mediation

The requirements for the mediation process for Infant Toddler EI programs are included in 34 CFR § 303.431 and 55 Pa. Code § 4226.98 and the requirements for the mediation process for Preschool EI programs are included in 34 CFR § 300.506.

Mediation is a collaborative problem-solving process that depends on the willingness of the family and the EI program to discuss their concerns in hopes of reaching an agreement on the area of concern. In contrast, during a due process hearing, a hearing officer renders a decision. Mediation is voluntary on the part of the family and the EI program. Mediation may not delay or deny a family's right to a due process hearing. Mediation may be requested at any time, even if a due process hearing has already been requested or is underway.

The family or EI program may request a mediation session by contacting ODR at 1-800-222-3353 or <https://odr-pa.org/mediation/>. If a family requests mediation through the EI program, the program shall forward the request to ODR immediately to ensure that mediation is not delayed. A mediation session must be held within 10 calendar days, following the family's request, at a location that is convenient to the parties to the dispute. All parties involved in the dispute must participate at the mediation session. Attorneys may participate in mediation; however, the EI program should not have an attorney participate on its behalf unless the family's attorney is participating.

The discussions that occur during the mediation process must remain confidential and cannot be used as evidence in any subsequent due process hearing or civil proceeding.

If an agreement is reached through mediation, the agreement is legally binding and must be signed by both the family and a representative of the EI program. The signed mediation agreement should specify that the agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States. ODR will forward a copy of the signed mediation agreement to the Bureau of Early Intervention Services and Family Supports (BEISFS). The EI program shall contact their BEISFS Advisor within 10 calendar days of the execution of the mediation agreement to provide the status of the agreement's implementation. The BEISFS

Advisor will monitor the EI program to ensure compliance and implementation of the mediation agreement.

Due Process

The due process requirements are included in 34 CFR §§ 303.440-447 and 55 Pa. Code § 4226.99-4226.103 for Infant Toddler EI programs and in 34 CFR §§ 300.507-300.518 and 22 Pa. Code §§ 14.162-14.163 for Preschool EI programs.

Parents or EI programs may resolve educational disputes through a due process hearing. A due process hearing is a legal proceeding in which a hearing officer decides the outcome of the dispute for the parties. Throughout the due process proceedings, resolution through mediation remains available to the parties. In addition, during the proceedings, the parties may settle some or all of the issues among themselves at any time.

Due process hearings are similar to trials, with the impartial hearing officer presiding and acting as a judge. An attorney may represent the EI program. The parent may also be represented by an attorney or may proceed without counsel. The EI program must inform the family of any free or low-cost legal or other relevant services available in the area upon request or the filing of a due process complaint by the family or the EI program.

The family or EI program may request a due process hearing by contacting ODR at 1-800-222-3353 or <https://odr-pa.org/due-process/>. If a family requests a due process hearing through the EI program, the program shall forward the request to ODR immediately to ensure that the due process hearing is not delayed.

Infant Toddler Early Intervention

The following information on the process and timeline for due process hearings applies when the Infant Toddler EI program is a party to the hearing.

Pursuant to 55 Pa Code § 4226.100(b)(5) and (b)(6), a parent who is a party to a due process hearing may obtain a written or electronic transcription of the hearing and a written copy of the findings of fact and decision at no cost to the parent. The timelines for due process proceedings, which are established in the regulations at 34 CFR § 303.437 and 55 Pa. Code § 4226.102, require that a due process hearing be conducted and written decision mailed within 30 calendar days of receipt of the parent's request for a hearing. A hearing officer may grant specific extensions of time beyond the 30-day timeline at the request of a parent or the Infant Toddler EI program.

Any party aggrieved by the findings and decisions issued by the hearing officer may bring a civil action in state or federal court.

Preschool Early Intervention

Many of the requirements of IDEA and the subsequent regulations related to due process procedures are included in 22 Pa. Code Chapter 14 and remain in effect. The following information regarding timelines and processes for resolution meetings applies to Preschool EI programs only. These requirements are included in 34 CFR §§ 300.510 and 22 Pa. Code §§ 14.163.

Resolution Meetings

Within 15 calendar days of receiving notice of a due process complaint, and before the due process hearing begins, the Preschool EI Program must convene a meeting with the family and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the due process complaint.

The resolution meeting:

- a. Must include a representative of the Preschool EI program who has decision-making authority on behalf of the EI program;
- b. May not include an attorney of the EI program unless the family is also accompanied by an attorney. The family and the EI program determine the relevant members of the IEP Team that will attend the meeting. The purpose of the meeting is to discuss the due process complaint, and the facts that form the basis of the complaint, so that the Preschool EI program has the opportunity to resolve the dispute; and
- c. Is not necessary if:
 - i. the family and the Preschool EI program agree in writing to waive the meeting; or
 - ii. the family and the Preschool EI program agree to use the mediation process, as described under the heading **Mediation**.

Resolution Period

If the Preschool EI program has not resolved the due process complaint to the family's satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar day timeline for issuing a final due process decision begins at the expiration of the 30-calendar day resolution period, with certain exceptions for adjustments made to the 30-calendar day resolution period, as described below.

A family's failure to participate in the resolution process may delay the timelines for the resolution process and the due process hearing until it is agreed upon to participate in a meeting (unless both parties have consented to waive the resolution meeting or to use mediation). If after making reasonable efforts and documenting such efforts, the Preschool EI program is not able to obtain family participation in the resolution meeting, the Preschool EI program may, at the end of the 30-calendar day resolution period, request that a hearing officer dismiss the due process complaint.

Documentation of such efforts must include a record of the Preschool EI program's attempts to arrange a mutually agreed upon time and place, such as:

- a. Detailed records of telephone calls made or attempted and the results of those calls;
- b. Copies of correspondence sent and any responses received; and
- c. Detailed records of visits made to the family's home and the results of those visits.

If the Preschool EI program fails to hold the resolution meeting within 15 calendar days of receiving notice of the family's due process complaint or fails to participate in the resolution meeting, the family may ask a hearing officer to order that the 45-calendar day due process hearing timeline begin.

Adjustments to the 30-day calendar day resolution period

If the family and the Preschool EI program agree, in writing, to waive the resolution meeting, then the 45-calendar day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar day resolution period, if the family and the Preschool EI program agree in writing that no agreement is possible, then the 45-calendar day timeline for the due process hearing starts the next day.

If the family and the Preschool EI program agree to use the mediation process, at the end of the 30-calendar day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either the family or the Preschool EI program withdraws from the mediation process, then the 45-calendar day timeline for the due process hearing starts the next day.

Written settlement agreement

If a resolution to the dispute is reached at the resolution meeting, the family and the Preschool EI program must enter into a legally binding agreement that is:

- a. Signed by the family and a representative of the Preschool EI program;
- b. Either party may void the agreement within three business days of the time that both the family and the Preschool EI program signed the agreement.

Individualized Family Service Plan (IFSP) and Individualized Education Program (IEP) Facilitation:

IFSP and IEP facilitation is a voluntary process that can be utilized when all parties to an IFSP or IEP team agree that the presence of a neutral third party would help facilitate communication and the successful drafting of the IFSP or IEP. This process is not necessary for most IFSP or IEP meetings. It is most often utilized when any of the team believes that it may not be possible to resolve an issue at the IFSP or IEP meeting. The family or EI program can request IFSP/IEP facilitation through the EI program or by contacting ODR at 1-800-222-3353 or <http://odr-pa.org>.

NEXT STEPS

Local EI programs shall review the requirements outlined in this announcement and update their local procedures to assure compliance.

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