

Mediation and Administrative Due Process Hearings

Introduction

Individual child complaint resolution, as described in this Policy, involves the formal resolution of concerns and disagreements between the parent and the involved Infant-Toddler Program through the use of mediation and/or administrative due process hearings. These complaints affect a single child or the child's family. This policy does not cover interagency disputes or complaints that involve the State Complaint Resolution process. However, if a family believes that their complaint involves a violation of state or federal requirements, the family may choose to concurrently file a request for resolution through the State Complaint Resolution System. *(For additional information, see Policy Bulletin #32 - Complaint Resolution-Interagency Disputes and Policy Bulletin #33 -State Complaint Resolution System.)*

The parent of an eligible child must receive a timely administrative resolution, including the right to mediation of any complaints concerning an agency's proposal or refusal to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. Resolution of such complaints must occur within thirty (30) calendar days (see filing process), even in those cases in which a parent requests both mediation and an administrative due process hearing.

Mediation may be requested with or without a request for an administrative due process hearing. The Mediation process is voluntary on the part of the parties, and is not used to deny or delay a parent's right to an administrative due process hearing, or to deny any other rights under Part C of IDEA.

The child and family have a right to continue receiving the appropriate early intervention services currently being provided during the pendency of any proceeding involving mediation and/or an administrative due process hearing, unless the provider and the parent otherwise agree. If the complaint involves an application for initial services under the Infant-Toddler Program, the child and family must receive those services that are not in dispute.

Whenever a parent has a concern or disagreement related to their child's early intervention services, the director of the Children's Developmental Services Agency, or his designee, must immediately contact the parent and attempt to resolve the concern or disagreement informally through discussion and negotiation. CDSAs may consult with the Early Intervention Branch Central Office, if necessary, during these informal negotiations with a parent. If agreement cannot be reached during this contact, the parent must be advised of the availability of and the procedure for requesting formal complaint resolution, including mediation and administrative due process hearing. Service Coordinators and other service providers are responsible also for informing parents of the availability of and the procedures for requesting formal complaint resolution.

The Service Coordinator should assist the parent, as needed and requested (e.g., putting the request for mediation and/or an administrative due process hearing in writing, providing support, explaining rights, informing the parent of advocacy groups), with any complaints during the time the child is enrolled in or in the process of enrolling in the Infant-Toddler Program. The Service Coordinator must document assistance and support that he/she provides to the parent in the agency's record on the child and submit a copy of this documentation to the Children's Developmental Services Agency at the time of the notation.

All requests for mediation and/or an administrative due process hearing must be submitted in writing to the Division of Public Health as the state lead agency. The request is addressed to the Early Intervention Branch Head, Division of Public Health, 1916 Mail Service Center, Raleigh, NC 27699-1916. Telephone: (919) 707-5520.

The Early Intervention Branch Central Office will involve the relevant Children's Developmental Services Agency in all complaints initiated to the central office and will provide the Children's Developmental Services Agency with a summary of all communications with the parent and any relevant documentation made by the central office as a result of central office staff interactions with the parent. The Early Intervention Branch Central Office will summarize and publish information regarding formal complaints on a semi-annual basis. The Early Intervention Branch Central Office will report any privacy complaints to the Division of Public Health's privacy officer.

Filing Process

Submission of a written request for mediation and /or an administrative due process hearing from the parent using the *North Carolina Infant-Toddler Program Parent Request for Mediation and/or Administrative Due Process* form (available at the Early Intervention Branch Central office; telephone: (919) 707-5520), or as a letter from the parent, constitutes a request for resolution. If the request involves more than one provider, the parent only needs to submit one written request for resolution. If the written request is presented to a service coordinator or to the CDSA, the request must be immediately forwarded to the Early Intervention Branch Central office of the Division of Public Health. The thirty (30) day timeline begins when the written request is received by a representative of the CDSA or by the Division of Public Health's Early Intervention Branch Central Office. The Division of Public Health's Early Intervention Branch must notify and involve immediately all other appropriate agencies and service providers, if more than one is named in the request for resolution or if the request involves multiple providers.

The request for resolution should include:

- a. the name and address of the child;
- b. the name and address of the parent;
- c. the name and address of the agency or service provider against whom the complaint is made;
- d. a statement of facts describing the nature of the complaint, and
- e. the signature of the parent making the complaint, with the date of signing.

The Division of Public Health must ensure that the mediation and/or administration due process hearing procedures are followed, that the parent's rights are protected, and that appropriate follow-up is completed.

1. Upon receipt of a request for mediation and/or an administrative due process hearing, the Division of Public Health must immediately contact the parent to acknowledge receiving the complaint, discuss the parent's concerns, explain the parent's rights regarding complaint resolution (including the thirty (30) day timeline) and seek resolution through discussion and negotiation, if possible. As appropriate, the Division of Public Health must talk with other involved agencies and service providers in order to gather information and seek resolution.

2. If resolution is reached, the Division of Public Health immediately completes the *North Carolina Infant-Toddler Program Mediation and/or Administrative Due Process Hearing Resolution Agreement* form, obtains the appropriate signatures, and sends the original to the parent outlining the decision and the resolution steps to be followed. The form is copied to all involved parties.
3. If resolution is not reached through discussion and negotiation, the Early Intervention Branch of the Division of Public Health ensures the parent's understanding of the next steps in the complaint resolution process and determines whether the parent desires mediation or prefers to move directly to an administrative due process hearing.
4. If the parent desires mediation, the process begins with number 5 below. If the parent prefers to move directly to an administrative due process hearing, the process begins with number 11 below.
5. The Early Intervention Branch of the Division of Public Health appoints a Mediator from the approved state list to resolve the complaint and provides relevant information regarding the complaint to the Mediator. The mediator must be qualified, impartial and trained in effective mediation techniques.
6. The Early Intervention Branch of the Division of Public Health notifies the parent and all involved agencies and service providers of date, time, and location of the mediation session no later than seven (7) calendar days prior to the session. The session must be scheduled at the parent's convenience and in a location that is convenient to the parties to the dispute.
7. Mediation occurs.
8. If agreement is reached, the Early Intervention Branch of the Division of Public Health completes the *North Carolina Infant-Toddler Program Mediation and/or Administrative Due Process Hearing Resolution Agreement* form, obtains the appropriate signatures, and sends the original to the parent. The form is copied to all involved parties.
9. If agreement is not reached through the mediation process, the mediator informs the parent of his/her right to and procedures for either proceeding to or requesting an administrative due process hearing.
10. The Mediator informs the Early Intervention Branch of the Division of Public Health that a mediation agreement has not been reached and the parent's preference for next steps.
11. The Early Intervention Branch of the Division of Public Health appoints a Hearing Officer from the approved state list to hear the complaint and provides relevant information about the complaint to the Hearing Officer.
12. The Early Intervention Branch of the Division of Public Health notifies the parent and all involved agencies and service providers of date, time, and location of the due process hearing no later than seven (7) calendar days prior to the hearing. The hearing must be scheduled at a time and place that is reasonably convenient to the parents.

13. The administrative due process hearing occurs.
14. The Hearing Officer provides written findings of fact and decisions to each of the parties and the Early Intervention Branch of the Division of Public Health. Each party is mailed a copy of the decision by certified mail, return receipt requested, within thirty (30) days after the initial receipt of a parent's complaint.
15. The Hearing Officer informs the parent that he/she may obtain a transcript of the hearing at no cost and that he/she has the right to bring civil action in state or federal court, if he/she disagrees with the findings and decisions. The Hearing Officer is responsible for making the transcript of the hearing available to the parent.

Mediation

The parent cannot be required to use mediation. The parent may choose it as an intervening step prior to an administrative due process hearing or may request mediation alone.

Many parents have found that mediation can lead to a speedy resolution of differences between the parent and agencies without the development of an adversarial relationship and with less emotional stress to the parent. Mediation must be free, timely, and confidential. Discussions that occur during mediation may not be used as evidence in any subsequent administrative hearings or civil proceedings. The Mediator should require all involved parties to sign a confidentiality statement prior to the commencement of the mediation process.

An agreement reached by the parties in the mediation process must be documented in a written mediation agreement. The agreement is legally binding, and must be signed by both the parent and a representative of the other party that has the authority to bind the agency to the agreement. The agreement is enforceable in any state or district court of the United States. The Early Intervention Branch of the Division of Public Health is responsible for the costs of the mediation process.

Administrative Due Process Hearings

Parents involved in administrative due process hearings must be informed and given the right to:

- a. be accompanied and advised by legal counsel (paid for by the parent) and by individuals who have special knowledge of or training about early intervention services for eligible children;
- b. present evidence and confront, cross-examine, and compel the attendance of witnesses;
- c. prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five (5) calendar days before the proceeding;
- d. obtain a written or electronic verbatim transcription of the proceeding, and
- e. obtain written findings of fact and decisions.

The hearing officer must perform the following duties:

- listen to the presentation of relevant viewpoints about the complaint;
- examine all information relevant to the issues;
- seek to reach a timely resolution of the complaint, and
- provide a record of the proceedings, including a written decision.

The Hearing Officer has the following powers and authority, including the right to:

- a. establish reasonable time limitations on the parties' presentations;
- b. disallow irrelevant, immaterial, or repetitive evidence;
- c. direct that additional evaluations of the child be done;
- d. make findings of fact and conclusions of law relevant to the issues;
- e. issue subpoenas for the attendance of witnesses or the production of documents, and
- f. specify the type and scope of services to be offered where the proposed services are found inappropriate.

The Hearing Officer does not have the authority to determine that only a specific program, specific early intervention staff member, or specific service provider is appropriate for the child and the family.

The decision of the hearing officer is binding unless it is reversed on appeal. Any party aggrieved by the findings and decision regarding an administrative due process hearing has the right to bring a civil action in state or federal court.

Appointment of Mediators or Hearing Officers

An impartial person who meets federal and state qualifications must be appointed as the Mediator or Hearing Officer by the Early Intervention Branch of the Division of Public Health. Mediators and Hearing Officers must be knowledgeable in laws and regulations relating to the provision of early intervention services for eligible children and their families. They must be selected from the official list kept by the Early Intervention Branch of the Division of Public Health.

This person must have knowledge of the Infant-Toddler Program requirements and the needs of, and services available for, eligible children and their families.

Impartial means that the person appointed as Mediator or Hearing Officer:

- a. is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child, and
- b. does not have a personal or professional interest that would conflict with his objectivity in implementing the process.

A person who otherwise qualifies as a mediator or administrator due process hearing officer is not an employee of an agency solely because the person is paid by the agency to implement a complaint resolution process.