|  |  |
| --- | --- |
| Title: | **DISPUTE RESOLUTION: MEDIATION AND HEARING** |
| Purpose: | Details the steps available to families who disagree with a decision made by a Birth to Three program or by the Birth to Three System. |

# Overview

In addition to filing a written complaint, families have two other formal avenues with which to resolve a dispute over their child’s eligibility or their [IFSP](file:///\\SDE-I-FS1HFDK\EARLYCHILD\BirthToThree\Procedures\Working%20Draft%20Procedures\Ready%20for%20posting%20now\Forms\Form%203-1-IFSP.doc) or service delivery within the Birth to Three System. These are requesting either mediation or a hearing or both.

**Parent** **Notification of Dispute Resolution Rights**

Prior to the evaluation of a child to determine eligibility for the Birth to Three System (and annually thereafter for eligible children), the service coordinator will provide parents with a copy of the booklet “Parents Rights Under IDEA Part C” and explain, in their preferred language or mode of communication, their rights which include the right to request mediation or request a hearing.

**Mediation**

Parents may request mediation with regard to:

1. a proposal to initiate or change the identification, evaluation or early intervention services of their child;

2. refusal to initiate or change the child’s identification, evaluation or early intervention services of their child.

Mediation is an optional process offered to two parties with differing viewpoints. The process is an informal way of resolving differences through understanding and compromise of the differing viewpoints. If mediation is successful, then there is no need for a hearing.

Mediation shall be offered to any parent by the Family Liaisonwhen a parent has been unable to reach agreement with their Birth to Three program regarding identification or early intervention services. The Family Liaison will instruct the family to make the request in writing and will send the parent the brochure “The Principles of Mediation”. If the parent selects mediation, it is expected that the families’ Birth to Three program will participate in the mediation. The program will need to identify who will represent the agency during the mediation. This must be someone who can make decisions on all issues and can sign agreements. If any party other than the parent requests mediation, it may only be initiated with the consent of the parent(s).

The Family Liaison will inform the Birth to Three Director of the request and she will assign an impartial mediator. The assigned mediator will contact both the parent(s) and the program as soon as possible to determine a convenient time and location for the mediation. The service coordinator or another direct service provider may join the program director in the mediation. The mediator can help the program and the family decide who should participate in the mediation. Others, such as an agency director or legal counsel, may be available by telephone for caucus during the mediation session.

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

Prior to the beginning of the mediation process, all parties must sign a legally binding agreement that states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. This agreement is signed by both the parent and a representative of the Birth to Three program who has the authority to bind their agency.

1. Role of the Mediator

a. The mediator will contact both parties and schedule the session.

b. The mediator helps both sides to discuss their differences. The mediator will help them to find points they agree on and see other choices they may have.

c. The mediator may hold private discussions with either party during the course of the mediation.

d. No material needs to be sent to the mediator. All pertinent documents and records are shared at the mediation session. Each party may bring any information they feel will be relevant in reaching a resolution.

2. Results of Mediation

a. Agreement - the parties reach agreement and sign a mediated statement that commits all parties to the terms of the agreement. A copy is sent to the Birth to Three Director.

b. Non-agreement - if the parties fail to reach an agreement within 30 days of the request, the mediator certifies in writing that mediation has been unsuccessful and either party may request a hearing.

c. Partial agreement - If the parties are unable to resolve all issues, a partial agreement may be written with consent. Either party may then request a hearing for any unresolved issues.

d. Any changes in services as a result of the mediation must be documented in a revised IFSP.

e. The lead agency will ensure that the results of the mediation are implemented.

**Hearing**

A hearing is a formal review of the problem identified by the parent, all data related to the problem and testimony from the parties concerned.

Parents may request a hearing with regard to:

1. a proposal to initiate or change the identification, evaluation or early intervention services of their child;

2. refusal to initiate or change the child’s identification, evaluation or early intervention services of their child.

Parents also have the right to request a hearing if they have requested that information in their child’s record be amended and the program refuses to amend the record in accordance with the request (see [Records procedure](file:///C:\Admin%20Support\Procedures\FY%2012%20Pending%20Procedures\Records.doc)).

Parents must request a hearing in writing to the Family Liaisonon these issues. Upon receipt of the signed written request, the Family Liaison shall notify the Birth to Three Director of the request.

The Family Liaisonshall forward the written request for a hearing to the Birth to Three Director. The Birth to Three Director shall, upon receipt of a written request for a hearing, appoint an impartial hearing officer, knowledgeable about the provisions of the Birth to Three regulations and the needs of and services available for eligible children and their families. The hearing will be scheduled at a time and in a location that is convenient to the parents. The hearing officer will issue a written decision within 30 days of the written request. The 30-day timeline may be extended by the hearing officer at the request of either party.

1. Role of the Hearing Officer. The hearing officer:

a. shall not be an employee of any public or private agency or program involved in the provision of early intervention services or care of the child, nor have a personal or professional interest that would conflict with his or her objectivity in implementing the process. A person who is paid to serve as a hearing officer is not deemed to be an employee of a public agency.

b. listens to the presentation of viewpoints concerning the matter under review, examines all information relevant to the issues, and seeks to reach a timely resolution of the matter.

c. will hold a preliminary conference by telephone to clarify the issues, review rights and procedures and settle issues not in dispute.

2. Rights of the Parents. Parents have the right to:

a. receive 10 days’ written notice of the date, time and place of the hearing.

b. agrees or not agree to a preliminary conference with the hearing officer.

c. be accompanied and advised by counsel and individuals with special knowledge or training with respect to early intervention services for eligible children.

d. present evidence and confront, cross-examine and compel the attendance of witnesses.

e. prohibits the introduction of any evidence at the hearing that has not been disclosed to them at least five days before the proceeding.

f. obtains a written or electronic verbatim transcription of the proceedings.

g. obtains written findings of fact, conclusions of law and decisions and

1. have the child present at the hearing.

3. Results of the Hearing

1. The hearing officer informs the parents or guardians and lead agency of their decision in writing within 30 days of the request.
2. Appeals from the decisions of the hearing are to the superior court in the child’s district of residence within 30 days after mailing of the notice of the final decision of hearing. An alternative is to appeal to federal district court.
3. Any changes in services as a result of the hearing must be documented in an IFSP as part of an IFSP review meeting.
4. The lead agency will ensure that the results of the hearing are implemented.

A child remains in his current program pending a hearing unless the parent and the Lead Agency agree otherwise. If the hearing involves agreement on the initial IFSP, the child shall receive those services that are not in dispute. A child who is no longer eligible for Birth to Three will not continue to receive Birth to Three services while a hearing either with Birth to Three or with the LEA is being adjudicated.

**Responsibility of Programs** **Prior to and During a Hearing**

If a parent of a child enrolled in the Birth to Three System has requested an impartial hearing, the service providing agency shall submit to the Lead Agency within two working days two copies of the child’s entire early intervention record in a format required by the attorney for the Lead Agency.

Program directors or staff or both may be subpoenaed to testify at the hearing. They will most likely be asked about their level of experience and expertise in providing early intervention services as well as their experience in providing services to the child in question.