

The Department of Public Health, as part of its 30th Year Part C application, proposes to amend Section XIII.M., Procedures to Address the Due Process Complaints of the Massachusetts Department of Public Health Early Intervention Operational Standards to align with the Part C Regulations, CFR §§ 303.440-448, States that Choose to Adopt the Part B Due Process Hearing Procedures Under Section 615 of the Act:

M. Procedures to Address a Due Process Complaint (Due Process Hearing)

General:

A parent, Early Intervention provider, or the Department of Public Health may file a due process complaint on any matter relating to the identification (child find or eligibility for EI services), evaluation, placement or provision of early intervention services. **303.440(a)(1)**.

- 1) The due process complaint must allege a violation or dispute that occurred not more than two (2) years before the date the parent or EI provider knew or should have known about the action or dispute that forms the basis of the complaint **303.440(a)(2)/303.433(e)**. The two-year timeline does not apply to a parent if the parent was prevented from filing a due process complaint due to:
 - a. a misrepresentation by the agency that it had resolved the problem that formed the basis of the complaint, or
 - b. the failure of the Early Intervention provider or lead agency to provide the parent with the information necessary to file the complaint. **303.443 (f)**
- 2) The Department supports the practice of and incorporates resolution meetings as part of these standards whenever a due process complaint is filed by a parent. A resolution meeting is an opportunity for the parties to come together in an effort to discuss the dispute and the facts that form the basis of the dispute **303.442 (2)** as an alternative to a due process hearing
- 3) The Department adopts a 45-day timeline for the adjudication and to issue a decision. The timeline will begin at the end of the 30-day resolution process, unless otherwise allowed per the exceptions herein. The 45-day timeline may be extended at the request of either party **303.447(c)**, or in the event the complaint is amended subject to the approval of the hearing officer. The date both the Department and the receiving party receive a copy of the due process complaint (or the latter of the two dates if received on separate dates) will serve as the start date of the formal process. **303.440(c)**

- 4) The Department will acknowledge receipt of the complaint in writing, include a copy of the family rights notice, and provide the parents or authorized individual with a list of available free or low-cost legal or advocacy services. 303.440(b)
- 5) The Department will offer and review the benefits of mediation to both parties as an additional option for resolving the dispute. Mediation will not delay the process for a hearing unless the parties agree. Mediation may be accessed at any point during the hearing process.
- 6) The Department will maintain a list of qualified, impartial hearing officers who shall be knowledgeable about the provisions of Part C and the needs of and services available to eligible children. 303.443 (3) A hearing officer will be promptly assigned upon receipt of a due process complaint
- 7) The Department will maintain a central file of decisions, which shall be a public record with the exception of personally identifying information.
- 8) The Department will ensure that the hearing officer's decision is promptly implemented.

FILING A DUE PROCESS COMPLAINT

1. Contents

All due process complaints must be made in writing. A party may not be granted a hearing until the party or an authorized representative of the party such as an attorney, advocate, or person otherwise authorized to file a complaint on behalf of a child or parent files a complaint concurrently with the Department of Public Health 303.441(a)(2) and sends a copy of the complaint to the receiving party (see, in part, 303.441(c)) As needed or requested, the Department shall assist the parent in drafting and filing the complaint. The complaint must include:

- a. The name of the child;
- b. The address of the child or in the case of a homeless child, available contact information for the child, the parent and the Early Intervention provider;
- c. The Early Intervention provider servicing the child;
- d. A description of the issue(s) to be resolved relating to the proposed or refused initiation or change;
- e. the facts relating to the dispute; and
- f. A proposed resolution to the dispute to the extent known to the party at the time the dispute occurred or at the time of the filing. 303.441(b)

2 Sufficiency of Due Process Complaint

- a. The complaint will be considered sufficient unless the receiving party notifies the hearing officer and the moving party in writing within 15 calendar days that the receiving party does believe the complaint does not meet the content requirements listed above. 303.441 (d)(1)
- b. The hearing officer will make a determination and notify the parties in writing within five (5) calendar days as to whether the complaint meets the content requirements. 303.441(d)(2)

3. Amending a Due Process Complaint

- a. A party may only amend a due process complaint if:
 - i. The receiving party provides consent in writing to the amendment, and is provided an opportunity to attempt to resolve the dispute through a resolution meeting or mediation (303.441(d)(3)(i) or
 - ii. The hearing officer grants permission for an amendment of the complaint. The hearing officer may grant the request at any time but no fewer than five (5) days before the hearing is scheduled to begin (303.441(d)(3)(ii)
- b. If the amended complaint is agreed to in writing by the receiving party or approved by a hearing officer, the timelines for convening a resolution meeting, conducting the hearing and issuing a decision will be adjusted to reflect the approval of the amendment. 303.441(d)(4)
- c. The program will provide the parent(s) with prior written notice addressing each of the allegations/issues in the complaint within 10 calendar days. The response/notice will include:
 - i. An explanation of why the program proposed or refused to take action outlined in the parent's complaint;
 - ii. A descriptions of other options were considered and the reasons why those options were rejected;
 - iii. A description of each evaluation, procedure, assessment, record (including records or reports from sources outside the IFSP team) which formed the basis for the decision related to the proposed or refused action; and
 - iv. A description of any other relevant factors that informed the program's decision about the proposed or refused action related to the issues/allegations outlined in the parent's complaint.

4. Resolution Meeting

A resolution meeting is an opportunity for the parties to come together in an effort to discuss the dispute and the facts that form the basis of the dispute (303.442 (2)) as an alternative to a due process hearing. An EI program is required to convene a resolution meeting whenever a parent initiates a due process complaint. 303.442(a). Though not required, a program is encouraged to offer a resolution meeting when the program initiates a due process complaint.

- a. When a due process complaint is initiated by a parent, the resolution meeting will be convened within 15 calendar days upon receipt of the complaint. 303.442 (a)
- b. The resolution meeting will be held at a time and location mutually and reasonably convenient for the participants.
- c. Written notice of the date, location, time and participants will be sent to the parents a reasonable time before the date of the meeting.
- d. The participants in the resolution meeting will include those with knowledge of the facts identified in the complaint including:
 - i. A representative of the EI program or agency who has the decision-making authority on behalf of the EI program or vendor agency. 303.442 (a)(i).
 - ii. Other relevant members of the IFSP Team who have specific knowledge about the facts of the complaint. The relevant members will be determined by the parent and the program. 303.442 (4).
 - iii. The participants may not include an attorney representing the EI program unless the parent is accompanied by an attorney. 303.442 (a)(ii)..

A resolution meeting does not need to be held if:

- a. The parties mutually agree in writing to waive the resolution meeting, or
- b. The parties mutually agree to engage in mediation 303.442(3).

D. Timelines for the Initiation of Due Process Hearings (within the 30-day Resolution Process Period

- a. If the parties have not resolved the issues outlined in the complaint within 30 days of receipt of the complaint, the hearing may move forward. 303.442 (b).
- b. The due process hearing (start of the 45-day timeline) may commence once any of the following occur: 303.442 (c).
 - i. The parties agree in writing to waive the resolution meeting 303.442 (c)(1).
 - ii. At the conclusion of either a mediation or resolution meeting if the parties agree in writing that no agreement is possible. 303.442 (c)(2).
 - iii. If the parties agree to continue the mediation process beyond the 30-day resolution period, but then one party withdraws from mediation. 303.442 (c)(3).
 - iv. If a party voids a legally binding settlement agreement (signed by both the parent and a representative of the EI program/agency with the authority to bind the EI

program/agency agreement) within three business days of the executed agreement.
303.442 (d).

- c. Resolution meetings that are convened at mutually agreeable times but do not occur as a result of a parent's lack of attendance will delay the timeline for the resolution process and the commencement of the hearing. The hearing may not occur unless the meeting is held. 303.442 (3).
- d. If the program, after documenting good faith efforts, is unable to engage the parent to participate in the resolution meeting, the program may, at the conclusion of the 30 day period, request the hearing officer dismiss the parent's complaint. 303.442 (4).
- e. If the EI program fails to convene the resolution meeting within 15 days of receipt of the parent's complaint, the parent may request the hearing officer begin the due process hearing timeline. 303.442 (5).

E. Roles, Responsibilities, and Impartiality of the Hearing Officer

The individual who serves in the role of a hearing officer:

- a. Must not be an employee of the Department of Public Health or an Early Intervention program involved in the provision of Early Intervention services for the infant or toddler. (303.433(i)(A))
- b. Is not an employee of the Department of Public Health but may be paid by the Department of Public Health to serve in the role of a hearing officer. (303.443(B)(2))
- c. May not have a personal or professional interest that conflicts with his or her own objectivity (303.433(i)(B)).
- d. Is knowledgeable about the provision of Part C and the Early Intervention Operational Standards including relevant decisions and interpretations. 303.443(B)(ii)
- e. Shall:
 - i. promptly arrange for a hearing at a time and a place that is reasonably convenient for the parents and duly notify the parties; listen to the presentation of the relevant viewpoints about the issue(s) in dispute; examine all information relevant to the issues; seek to reach a timely resolution of the complaint; provide a record of the proceedings; and mail a written decision to each of the parties;
 - ii. conduct the pre-trial and hearing process in accordance with the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00; and (303.433(B)(iii))
 - iii. render and write decisions consistent with professional legal practice. (303.443(B)(iv))
- f. Shall base a decision about whether an infant or toddler was appropriately identified, evaluated, and placed, or was provided with appropriate Early Intervention services on substantive grounds. A hearing officer may make a determination that an infant or toddler was not appropriately

identified, evaluated, or placed, or provided appropriate Early Intervention services based on procedural violations only if the procedural violations:

- i. impeded the child's right to be identified, evaluated, and placed or to receive appropriate Early Intervention services;
 - ii. impeded the parent's right to participate in the decision-making process related to the identification, evaluation, or placement, of the child or the provision of appropriate Early Intervention services;; or
 - iii. caused a deprivation of educational or developmental benefit.
- g. May order an EI program to comply with the procedural requirement associated with any aspect of IDEA or these Operational Standards.
- h. Will issue a written decision to the parties within 45 calendar days of the conclusion of the resolution process **303.447 (a)** unless an extension has been granted consistent with these standards.

7. Hearing Rights, Procedures

Either party to a hearing has the right to:

- a. be accompanied and advised by their own legal counsel or authorized representative and by other individuals with special knowledge or training with respect to Early Intervention services or infants and toddlers with disabilities; **303.344(a)(1)**
- b. present evidence and confront, cross-examine and compel the attendance of witness; **303.344(a)(2)**
- c. prohibit the introduction of evidence at the hearing which has not been disclosed to the other party at least five (5) business days prior to the hearing, unless agreed to by the parties; **303.344(a)(3)**. Each party must disclose all evaluations, including the recommendation contained therein within five (5) business days if the party intends to use them at the hearing. **303.344(b)**
- d. represent themselves *pro se*;
- e. appeal the decision of the hearing officer ;
- f. request an extension of the timeline; and

- g. be provided with an electronic, or if unavailable, a written verbatim transcript of the proceeding. 303.344(5)

In addition, parents have the right to:

- a. have the hearing open to the public; 303.344(c)(1)
- b. have the child who is the subject of the hearing present ;
- c. be provided with an interpreter whenever feasible at no charge, if required for proper adjudication of the matter;
- d. receive a copy of the record, written findings of fact, and a written decision at no cost; and 303.344(2)(1)
- e. be provided with an electronic, or if unavailable, a written verbatim transcript of the proceeding at no cost. 303.344(4)

8. Civil Action/Appeal

- 1) Any party aggrieved by the finding and decisions of the hearing officer has the right to bring a civil action in a state court of competent jurisdiction within 90 days from the date of the decision of the hearing officer. 303.448 (a).
- 2) The Department will make available to the court a copy of any administrative proceedings within the Department's possession. 303.448 (c)(1)
- 3) The court will hear any additional evidence at the request of the parties 303.448 (c)(2).
- 4) The court will grant appropriate relief to the aggrieved party based on the preponderance of evidence. 303.448 (c)(3) .
- 5) District courts have jurisdiction over actions brought under Section 615 of the Individuals with Disabilities Education Act without regard to the amount in controversy.
- 6) Nothing in this part restricts or limits the rights, procedures, and remedies available under the constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under this law seeking relief that is also available under Section 615 of the Act, the procedures under Section 303.440 and 303.446 must be exhausted to the same extent as would be required had the action been brought under Section 615 of the Act.