



from Equip for Equality's Legal Advocacy Program

EFE FACT SHEET – Special Education

Due Process Under the Early Intervention Program

Introduction

This fact sheet will explain the procedures available to you if you believe your child's services under the early intervention program are inadequate or if you disagree with decisions made in the Individualized Family Service Plan (IFSP).

This applies to children between birth and 36 months.

Due Process Basics

What is due process?

- “Due process” refers to the procedures the law provides for individuals to enforce their legal rights when they feel those rights have been violated.
- Illinois state law allows you to request an impartial administrative hearing to resolve disputes regarding the evaluation, identification, placement, provision of appropriate services, or delivery of services to your child.
- To pursue your right to a due process hearing, you must follow the procedures outlined under the law. If you do not, you may lose the opportunity to enforce certain rights.

When does due process apply?

- Due process is applicable when there is a dispute regarding the evaluation, identification, placement, provision of appropriate services, or delivery of services for your child.
- When faced with a dispute, it is often preferable to begin by trying to communicate directly with the early intervention services provider.
- In some cases, it may also be advisable to attempt mediation with the provider before pursuing a due process hearing.
- Due process applies when you are unable to otherwise resolve the dispute.

Step One – Requesting a Hearing

Who can request a hearing?

- You.
- Someone who works with your child at a public agency.

When should you request a hearing?

- You should submit a request for a hearing as soon as possible, but you must submit a request **no later than three months** after you knew or should have known about the alleged activity in dispute.
- The three-month limitation does not apply to any period of time when you are prevented from filing a request because the regional intake entity has misrepresented that it resolved the problem.
- The three-month limitation also does not apply to times when the provider is withholding information from you that it must provide by law.

How do you request a hearing?

- A request for a hearing must be made in writing and must include:
 - Your name, address, and telephone number. If no address is available, include any other available contact information.
 - The name of the child and the child's birthdate.
 - The name and address of the child's regional intake entity.
 - A description of the nature of the problem of the child.
 - Authorization for release of the child's early intervention service records to the Department of Human Services (the "Department") and the hearing officer.
 - The primary language you speak.
 - The service delivery agency and/or providers involved in the dispute.
 - The resolution that you are seeking.
 - Evidence supporting your proposed resolution.
- Make three copies of the request.
- Send your original request to:
 - Chief
Bureau of Administrative Hearings
Illinois Department of Human Services
100 S. Grand Avenue East – 3rd Floor
Springfield, IL 62762

- Send one copy of your request to:
 - Chief
Bureau of Early Intervention
Illinois Department of Human Services
222 South College, 2nd Floor
Springfield, IL 62704-1958
- Send another copy of your request to the regional intake entity serving your child.
- Keep a copy for your own records.

What happens after you send in your request?

- If the Department or other party determines that you have not provided sufficient information, they will notify you in writing within 15 calendar days after the receipt of your request. Otherwise, the process will move forward as described below.

Step Two - The Resolution Meeting

What is the resolution meeting?

- Upon receipt of a hearing request, the regional intake entity will convene a meeting with the parent and relevant member(s) of the IFSP Team.
- A Department representative may also attend this meeting.
- The purpose of the meeting is to provide you with an opportunity to resolve the complaint without the need for a formal hearing.
- Though the meeting is recommended, it is not mandatory if you and the other parties agree to waive it or to use mediation instead.

When does the resolution meeting take place?

- The resolution meeting must be held within 15 calendar days after receipt of your request for a hearing.

What happens at the resolution meeting?

- You may choose to bring an attorney. No other party may be accompanied by an attorney at the meeting unless you are accompanied by an attorney.
- If you are able to resolve the dispute at the meeting, you and the other parties present will execute and sign a legally binding agreement enforceable in court.
 - Any party may void this agreement within 3 business days after the agreement's execution.
- If you are unable to resolve the dispute at the meeting, or through optional mediation, you will move forward with the hearing.

Step Three – Optional Mediation

- Upon receipt of your request for a hearing, you and the other parties will be offered the option of mediation. Mediation is a process where you and the Department meet to discuss your concerns, and a neutral mediator is there to try to help you resolve your dispute in a manner satisfactory for all parties.

Step Four – The Hearing

What happens while I'm waiting for the hearing?

- Unless you and the Department agree otherwise, your child must continue to receive the early intervention services currently being provided.
 - If your request involves an application for initial services, your child must receive the services not in dispute.
- You should be informed of free or low cost legal and other related services available in the area.
 - If you are not informed of services in the area and are interested in receiving this information, you have the right to request it.
- There is a 30-day resolution period prior to the hearing, beginning after the receipt of your hearing request.
 - If the regional intake entity has not resolved your complaint to your satisfaction within the 30-day time period, the hearing may occur.
 - This 30-day time period will be delayed by any length of time you fail to participate in the resolution meeting, unless you and the other parties have jointly agreed to waive the meeting.

When is the hearing scheduled?

- There is a 45-day hearing resolution period during which the hearing must be scheduled, a final decision must be made, and the decision must be mailed to you.
 - The 45-day time period begins the day after one of the following:
 - ✓ You and the other parties agree in writing to waive the resolution meeting.
 - ✓ A mediation or resolution meeting starts but you and the other parties agree in writing before the end of the 30-day period prior to the hearing that agreement is not possible.
 - ✓ You and the other parties agree in writing to continue the mediation at the end of the 30-day resolution period prior to the hearing, but one of you later withdraws from the mediation process.
- Within 5 days after the 45-day hearing resolution period has begun, a hearing officer will contact you to determine a time and place reasonably convenient to you for the hearing and any pre-hearing conference.

- The hearing officer will provide you with at least 10 days' written notice of the dates, times, and locations of the hearing and any pre-hearing conference.

What is the pre-hearing conference?

- The hearing officer may conduct a pre-hearing conference either in person or by phone to exchange evidence and witness names and discuss details in preparation for the hearing.
- At the end of the conference, the hearing officer will prepare a written report of the conference to be entered into the hearing record.

What are my duties before the hearing?

- At least 5 business days prior to the hearing, you must:
 - Disclose to all other parties all evidence you may use at the hearing, including any evaluations and resulting recommendations.
 - Disclose the names of all witnesses you may introduce at the hearing and the nature of their testimony.
 - At the hearing, the hearing officer may bar you from introducing any evidence or witnesses that you have not properly disclosed.
- In advance of the hearing, you or any other party may request a delay in convening the hearing for good cause.
 - You must make your request for delay in writing to the hearing officer.
 - At the same time, you must also provide all other parties with a copy of your request for delay.
 - In your request, you must set forth the reasons you are requesting a delay.
 - The hearing officer will decide based on the reasons for the request whether to grant the delay.

What are my rights at the hearing?

- You have the following rights at the hearing:
 - At your own expense, to be accompanied and advised by an attorney and others with special knowledge or training about children with disabilities.
 - To choose whether to have the child who is the subject of the hearing present at the hearing.
 - To present evidence and confront, cross-examine, and compel the attendance of witnesses.
 - To prohibit the introduction of any evidence at the proceeding that has not been disclosed to you at least 5 days before the hearing.

- To obtain the record, findings of fact, and decision of the hearing, in written or electronic form, at no cost.
- To choose whether the hearing is open or closed to the public. Unless you request an open hearing, the hearing will be closed to the public.

What will happen at the hearing?

- Neither you nor any other party will be allowed to raise issues at the hearing that were not raised in the request for a hearing, unless the other party agrees.
- At the hearing, you or the agency requesting the hearing will have the burden of presenting your case first and of demonstrating that there is a violation of the Individuals with Disabilities Education Act.
- After both sides have submitted evidence and testimony, you will be given a reasonable period of time to present written or oral closing arguments.

What are my rights after the hearing?

- If you are dissatisfied with the result of the hearing, you have the right to bring a civil action in Illinois State Court or the United States District Court.



DO YOU HAVE A QUESTION?

Contact Equip for Equality's Special Education Clinic Helpline

1-866-KIDS-046 (voice) or 800-610-02779 (TTY)

SpecialED@equipforequality.org

www.equipforequality.org

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

Equip for Equality, an independent nonprofit organization, is the Illinois state Protection & Advocacy System whose mission is to advance the human and civil rights of children and adults with disabilities. The Special Education Helpline seeks to empower parents to advocate effectively. The Special Education Clinic, Helpline, and these publications were made possible by grants from the Chicago Bar Foundation, The Field Foundation, Illinois Bar Foundation, Illinois Equal Justice Foundation, Polk Bros Foundation, and the State of Illinois Department of Human Services. The contents of this publication are the sole responsibility of the authors and do not represent the official views of the grantors.

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