

Your Rights as a Parent in The Early Intervention Program

Parents have rights under the Early Intervention Program that *you* should know. Your Early Intervention Official is responsible for making sure you know about your rights. These rights include:

- The right to say yes or no to having your child evaluated or screened and to take part in a family assessment.
- The right to say yes or no to participating in the Early Intervention Program, without risking the right to take part in the future.
- The right to say yes or no to any certain type of early intervention service without risking your right to other types of early intervention services.
- The right to keep information about your family private.
- The right to look at and fix your child's written record under the Early Intervention Program.
- The right to be told by your Early Intervention Official of any possible changes in your child's evaluation or other early intervention services, before any changes are made.
- The right to take part—and ask others to take part—in all meetings where decisions will be made about changes in your child's evaluation or services.
- The right to use due process procedures to settle complaints.
- The right to an explanation of how your insurance may be used to pay for early intervention services.

Part of your service coordinator's job is to explain these rights to you and make sure you understand them and help you carry them out.

Your child's records

Your child's record includes *all* written materials developed or used for the Early Intervention Program. Your child's record may include:

- Information gathered as part of your child's referral to the Early Intervention Official.
- Screening and evaluation reports and summaries.
- Your family assessment (if you took part in one).
- Your Individualized Family Service Plan and all documents related to the plan.
- Progress notes and other information about your child's and family's services prepared by early intervention service providers (including your service coordinator).
- Any records about complaints you may have filed.
- All other records involving your child and family.

All information in your child's record must be kept confidential by the Early Intervention Official and early intervention evaluators, service providers, and service coordinators. You must give your written permission to allow information in your child's record to be released. There are two types of "releases" that you can sign:

- A *selective release*—this type of release requires you to identify the persons who can access the information in your child's record and from whom they can get the information.
- A *general release*—this type of release will allow information to be shared with individuals and agencies that will be providing services to your child and family.

No matter what type of release you sign, you can change your decision about who can access your child's record at any time.

As a parent, you have the right to...

- Ask what materials are being collected and kept in your child's record by your Early Intervention Official and service providers.
- Ask who has access to your child's record and who has seen or has copies of the record.
- Review - in person or through a representative - your child's record at any time. Your service coordinator can help you arrange to see your child's record.
- Ask for copies of any of the materials in your child's record. You may be charged a small fee for copying.
- Request that changes be made to your child's record. If you feel that any information in your child's record is wrong, misleading, or violates your child's and family's privacy and rights, you may ask your Early Intervention Official, service coordinator, evaluator, or service provider to correct or change the information. Once you ask for a change, the person you asked must tell you in 10 days whether:
 - the change has been made as you requested; or
 - your child's record has not been changed.

If your Early Intervention Official, service coordinator, evaluator, or service provider disagrees and will not make the change you asked for, you may have a statement placed in your child's record about your views.

You can also appeal the decision and ask your Early Intervention Official for an administrative hearing. The hearing will be conducted by a local official who has no direct interest in the hearing results. This hearing must be held within 30 days



and conducted in accordance with the Family Educational Rights and Privacy Act (FERPA).

If you and your Early Intervention Official disagree

Sometimes, parents and Early Intervention Officials do not agree on what early intervention services should be in the Individualized Family Service Plan (IFSP). For example, you may not agree with your Early Intervention Official on:

- The kinds of services your child and family should get.
- How often services should be provided.
- How long services should be provided.
- What service model is best.
- Where services should be provided.

Parents have the right to use either *mediation* - or an *impartial hearing* - or both, to resolve disagreements with their Early Intervention Official about early intervention services. There is no cost to you for either a mediation or an impartial hearing.

Any early intervention service in the IFSP that you and your Early Intervention Official agree to can be provided while you take part in either a mediation or impartial hearing.



What is mediation?

Mediation helps parents and Early Intervention Officials agree to early intervention services in the IFSP. Mediation brings parents and Early Intervention Officials together to talk about their concerns. Mediation is *confidential*—what you talk about with your Early Intervention Official will be kept private.

What can mediation do?

The main reason for mediation is to help you and your Early Intervention Official reach agreement as easily and quickly as possible. Mediation can:

- Clear up a misunderstanding or the cause of a problem.
- Let you and your Early Intervention Official speak your minds with a neutral person listening.
- Help you and your Early Intervention Official work together to better solve a problem.

You can ask for mediation . . .

The first step is to send a letter to your Early Intervention Official to ask for mediation (see the sample letter on page 44). Your service coordinator can help you with this task.

Your Early Intervention Official can also ask you to take part in mediation. Mediation is a *shared decision*. You and your Early Intervention Official must *both* agree to take part in mediation. If you *both* agree, your Early Intervention Official will tell the *Community Dispute Resolution Center* in your county your request.

The *Community Dispute Resolution Center* will assign a mediator to work with you and your Early Intervention Official. The mediator may ask you and your Early Intervention Official for more facts before getting started.

A mediator will set up a *mediation meeting* for you and your Early Intervention Official within two weeks of being contacted by your Early Intervention Official—unless you ask for more time.

Who attends the mediation meeting?

You and your Early Intervention Official (or EIO designee) must both attend the mediation. You can invite others to come with you to the meeting—such as a family member, friend, or advocate.

You may bring a lawyer if you let your Early Intervention Official know before the mediation meeting. Your Early Intervention Official may also bring a lawyer and must tell you ahead of time that she or he plans to do so.

Who are the mediators?

Mediators are trained, certified, and assigned by the *Community Dispute Resolution Center* in your county. They are skilled in listening to all sides of a problem, and how to be fair. Mediators are *not* experts in early intervention. They *are* expert



mediators who know about – and understand – the Early Intervention Program.

What takes place at a mediation?

Your mediator meets with you and your Early Intervention Official to discuss the issues involved and help you find answers. Both of you will have the chance to share your concerns about the early intervention services that need to be settled.

The mediation process must be finished in 30 days of the Community Dispute Resolution Center receiving the request from your Early Intervention Official. Once mediation is finished, a written agreement is prepared describing what was agreed to and outstanding issues. Your service coordinator will make sure this agreement is added to your IFSP.

Does mediation cost anything?

There is no cost to you for mediation. All costs are paid for by the New York State Department of Health federal funds under the Individuals With Disabilities Education Act.

What if no agreement is reached?

If you and your Early Intervention Official cannot agree on your IFSP, you can ask for an *impartial hearing*.

What is an impartial hearing?

An *impartial hearing* is another way for parents to settle disagreements with the Early Intervention Official about services in an IFSP. Parents can also ask for an impartial hearing if their child is found ineligible for services by an evaluator.

You have the right to ask for an impartial hearing to settle these problems, even if you take part in a mediation first. You do not have to take part in mediation before getting an impartial hearing. Both options are open to you and your family.

Impartial hearings are carried out by hearing officers who are fair and unbiased. These hearing officers are administrative law judges assigned by the Department of Health.

At a hearing, parents and early intervention officials give *testimony* and may use *witnesses* to



Attorney fees

If you think you may need help or advice from a lawyer, you should know that the fees for legal services can be paid for by your county under the following conditions:

1. You must take part in – and complete – mediation. A mediation is “completed” when:
 - A parent and EIO participate and agree to services to include in your IFSP.
 - A parent and EIO participate but do not reach agreement.
 - An EIO does not agree to take part in mediation.
 - The mediation meeting has not been held within two weeks of the EIO’s request to the Community Dispute Resolution Center (unless the parent asks for or agrees to an extension).
2. You request an impartial hearing and “substantially prevail” in the outcome. “Substantially prevail” means that the case is decided in your favor on some or most of the important issues in your case.
3. The county was represented by an attorney at the impartial hearing.

support their views. Parents may bring a friend, another parent, advocate, or an attorney to the impartial hearing. The hearing officer must reach a decision in 30 days. The hearing officer’s decision is final. You or the Early Intervention Official do have the right to ask for a judicial review of the hearing officer’s decision.

If you need to request an impartial hearing

You must write to the Commissioner of Health. (For a sample letter, see page 41.)

You can ask for an impartial hearing at any time. If your complaint is about your child’s eligibility, though, your request must be made within six months of the date your child was found ineligible for services.

Like mediation, an impartial hearing must be held at no cost to you.

If you request an impartial hearing

The Commissioner will assign an administrative law judge to act as a hearing officer.

You will get a written notice of the hearing, that will:

- Give the date, time, and place of the hearing.
- Present the issues that will be examined at the hearing.
- Explain how the hearing will be conducted.
- Tell you that you can bring any person of your choice to the hearing, which can include an advocate or an attorney.
- Advise you that interpreter services for the deaf will be provided, if needed.
- Tell you about your rights at the hearing.

Your Early Intervention Official must tell you if he or she plans to use an attorney at the hearing. You must be told of these plans within three working days of the date your Early Intervention Official is notified of your hearing.



This will give you a chance to find an attorney if you think you need one. Your service coordinator can help you find legal and advocacy services in your area.

If you go to an impartial hearing

The hearing officer must conduct the hearing in a fair manner. The hearing officer has the power to make decisions about requests made by either you or the Early Intervention Official.

You can be represented by an attorney or persons with special knowledge or training about children eligible for early intervention services. You can also have other supportive persons – like relatives or friends – come with you to the hearing.

Impartial hearings are private – unless parents request a public hearing.

When the hearing is completed

The hearing officer will make the final decision on your case. You will get a copy of the hearing officer's decision in writing. Your service coordinator and Early Intervention Official will also get a written

copy of the decision. So will the Commissioner of Health.

Your early intervention official or service coordinator will make certain that your IFSP is changed, based on the hearing officer's decision. Your IFSP must be changed within five working days of the written or oral decision of the hearing officer – whichever is sooner.

Handling other problems... making a systems complaint

Sometimes, parents have problems with *how* the Early Intervention Program is working. If you believe that your Early Intervention Official or service provider are not doing their jobs under the law, you can file a *systems complaint*. Some examples include:

- Not having an IFSP completed within 45 days of a child's referral to the Early Intervention Official.
- Not having services delivered on time.
- Not getting the services in your IFSP.
- Giving services to a child when a parent hasn't given their permission.
- Health or safety concerns in places where children are getting services.

To file a systems complaint, you must write to the New York State Department of Health (see the sample letter on page 43). You may also make a complaint by telephone or in person, if you have a fitting reason for making a spoken complaint instead of writing.

The Department of Health must investigate your complaint. If you make a complaint to the Department of Health:

- You will be contacted by Department of Health staff.
- You will be told how your complaint will be investigated. This may include interviewing you, any person named in the complaint, and others who may have helpful information about the complaint.



- You will be told how you can appeal the findings of the investigation to the U.S. Department of Education if you disagree with the results.
- Any information that could identify you will be kept private, unless you consent to having it shared.

The Department of Health must finish its investigation within 60 days from the time it gets the complaint. You will receive a written response to your complaint within 70 days.

This response will show the findings of the investigation. It will give any actions that must be taken if the problem you complained about is found to be real. The Department of Health is responsible for making sure all needed actions to correct the problem are taken.



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