IDEA 2004

MARYLAND STATE DEPARTMENT OF EDUCATION

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Informational Update

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Division of Special Education/Early Intervention Services

Part C Procedural Safeguards

The reauthorized Individuals with Disabilities Education Act (IDEA) was signed into law on December 3, 2004, by President George W. Bush. The provisions of the Act are effective July 1, 2005 with the exception of some elements of the definition of "highly qualified teacher" that took effect upon the signing of the Act. This is one in a series of documents, prepared by the Division of Special Education/Early Intervention Services, Maryland State Department of Education (MSDE) that cover a variety of high-interest topics to support local school systems, local Infants and Toddlers Programs and other public agencies in preparing to implement the new requirements. This document only addresses the changes in the provisions regarding Part C Procedural Safeguards that take effect on July 1, 2005. It does not address any changes that may be made in the final federal regulations or potential changes to State statutes or regulations.

1. How does the statute define "parent" of a child with a disability?

The term "parent" means:

- A natural adoptive, or foster parent of a child (unless a foster parent is prohibited by
  State law from serving as a parent*);
- A guardian (but not the State if the child is a ward of the State);
- An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual
  who is legally responsible for the child's welfare; or
- An individual assigned to be a surrogate parent. [Sec. 602(23)].

*Although the statute includes a foster parent in the definition of "parent," the definition in Md. Ed. Art. 8-412 does not include a foster parent, unless the foster parent is a relative or stepparent. Therefore, individuals serving as foster parents who are not relatives or stepparents, must be appointed the child's parent surrogate in order to represent the child in the early intervention decision-making process.

2. When must a parent surrogate be appointed to represent a child with a disability in the early intervention decision-making process?

The statute requires that the State have procedures to "protect the rights of infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual to act as a surrogate for the parents."(See answer to question 1.) The surrogate cannot be an employee of the State lead agency, or other State agency, and cannot be any person, or any employee of a person, providing early intervention services to the infant or toddlers or any family member of the infant or toddler. [Sec. 639(a)(5)]

There are no changes to the Part C surrogate parent procedures Section 639 (a)(5). COMAR 13A.13.01.11A(7)(g) requires that a surrogate parent be appointed by the State lead agency within 10 days after receipt of a written request by a local lead agency.

3. What is mediation and when is it permitted?

Mediation is defined as an attempt to bring about a peaceful settlement or compromise between parties to a dispute through the objective intervention of a neutral party. Mediation is an opportunity for parents and early intervention staff to meet with an independent mediator from the Office of Administrative Hearings and discuss a problem, issue, concern, or complaint in order to resolve the problem amicably without the necessity of a hearing. Mediation can be initiated at any time, if both parties agree to expedite the development of a solution for any dispute including matters that arise prior to the filing of a formal due process hearing request. This process is at no cost to the parent and public agency. Each mediation session is to be scheduled in a timely manner and held in a location that is convenient for the parties involved.

[Sec. 615(e), Sec. 639(a)(8) and *IDEA Guide to "Frequently Asked Questions,"* Committee on Education and the Workforce, February 17, 2005, pp.13-14].

4. How did IDEA 2004 change the provisions related to mediation?

Because Maryland has been implementing a statewide system to promote mediation, procedures have already been established and implemented to ensure parties have the opportunity to use mediation independent of a due process hearing to resolve disputes. IDEA 2004 states that if the parties successfully resolve a dispute through mediation:

- the written agreement executed by the parties must be signed by both the

parent and a representative of the agency who has the authority to bind the agency; and
- the mediation agreement is legally binding and is enforceable in any State court of competent jurisdiction or in a district court of the United States.

[Sec. 615(e)(2)(F)].

IDEA 2004 also includes the requirement stated in current federal regulation [34 CFR 300.506] that mediation agreements be set forth in writing and that discussions that occur during the mediation session are confidential and may not be used in any subsequent due process hearing or civil proceedings. [Sec. 615(e)(2)(G)].

Included in Procedural Safeguards Sec. 639(a)(8) in Part C of the statue is the right of parents to use mediation in accordance with Section 615, except for the substitution of terms used in early intervention for terms used in special education.

5. What Part C data must be collected and reported by MSDE to the U.S. Department of Education related to mediation and due process hearing requests?

MSDE must report, annually, the following data to the Secretary of Education and the public for Part C of IDEA:

- Number of due process hearing requests;
- Number of due process hearings conducted;
- Number of mediations held; and
- Number of mediation agreements reached. [Sec. 618(a)(1)(F) and(H)].

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