

§ 303.419

34 CFR Ch. III (7-1-02 Edition)

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.

(e) *Responsibilities.* A surrogate parent may represent a child in all matters related to—

(1) The evaluation and assessment of the child;

(2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(3) The ongoing provision of early intervention services to the child; and

(4) Any other rights established under this part.

(Authority: 20 U.S.C. 1439(a)(5))

[58 FR 40959, July 30, 1993, as amended at 63 FR 18296, Apr. 14, 1998]

MEDIATION AND DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

§ 303.419 Mediation.

(a) *General.* Each State shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in § 303.403(a) to resolve the disputes through a mediation process which, at a minimum, must be available whenever a hearing is requested under § 303.420. The lead agency may either use the mediation system established under Part B of the Act or establish its own system.

(b) *Requirements.* The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process—

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a due process hearing under § 303.420, or to deny any other rights afforded under Part C of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(3) The State shall bear the cost of the mediation process, including the

costs of meetings described in paragraph (c) of this section.

(4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(c) *Meeting to encourage mediation.* A State may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party—

(1) Who is under contract with a parent training and information center or community parent resource center in the State established under sections 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and

(2) Who would explain the benefits of the mediation process and encourage the parents to use the process.

(Authority: 20 U.S.C. 1415(e) and 1439(a)(8))

[63 FR 18296, Apr. 14, 1998]

§ 303.420 Due process procedures.

Each system must include written procedures including procedures for mediation as described in § 303.419, for the timely administrative resolution of individual child complaints by parents concerning any of the matters in § 303.403(a). A State may meet this requirement by—

(a) Adopting the mediation and due process procedures in 34 CFR 300.506 through 300.512 and developing procedures that meet the requirements of § 303.425; or

(b) Developing procedures that—

(1) Meet the requirements in § 303.419 and §§ 303.421 through 303.425; and

(2) Provide parents a means of filing a complaint.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1439(a)(1))

NOTE 1: Sections 303.420 through 303.425 are concerned with the adoption of impartial procedures for resolving individual child complaints (i.e., complaints that generally affect only a single child or the child's family). These procedures require the appointment of a decision-maker who is impartial, as defined in §303.421(b), to resolve a dispute concerning any of the matters in §303.403(a). The decision of the impartial decision-maker is binding unless it is reversed on appeal.

A different type of administrative procedure is included in §§303.510 through 303.512 of subpart F of this part. Under those procedures, the lead agency is responsible for (1) investigating any complaint that it receives (including individual child complaints and those that are systemic in nature), and (2) resolving the complaint if the agency determines that a violation has occurred.

NOTE 2: It is important that the administrative procedures developed by a State be designed to result in speedy resolution of complaints. An infant's or toddler's development is so rapid that undue delay could be potentially harmful.

[58 FR 40959, July 30, 1993, as amended at 63 FR 18296, Apr. 14, 1998]

§ 303.421 Appointment of an impartial person.

(a) *Qualifications and duties.* An impartial person must be appointed to implement the complaint resolution process in this subpart. The person must—

- (1) Have knowledge about the provisions of this part and the needs of, and services available for, eligible children and their families; and
- (2) Perform the following duties:

- (i) Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint.
- (ii) Provide a record of the proceedings, including a written decision.

(b) *Definition of impartial.* (1) As used in this section, *impartial* means that the person appointed to implement the complaint resolution process—

- (i) Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and

- (ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1439(a)(1))

§ 303.422 Parent rights in administrative proceedings.

(a) *General.* Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under §303.420.

(b) *Rights.* Any parent involved in an administrative proceeding has the right to—

- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;
- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;
- (4) Obtain a written or electronic verbatim transcription of the proceeding; and
- (5) Obtain written findings of fact and decisions.

(Approved by the Office of Management and Budget under control number 1820-0550)

(Authority: 20 U.S.C. 1439)

§ 303.423 Convenience of proceedings; timelines.

(a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents.

(b) Each lead agency shall ensure that, not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this