

58070 - HFS-90 - CHILDREN
DEVELOP. NEEDS

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-071

AN ORDER to renumber HFS 90.11 (2) (b) 1. e.; to amend HFS 90.03 (28), 90.05 (4) (a), 90.08 (7) (k), 90.11 (1) (c) 1. b., (2) (a) 1. and 2. and (b) 1. d., (4) (b) 5. and 6., (c) 3. and 4., (g) 2. and 3., (i) 2. and 3., (j) 2. and 3., (k) 1. and 2., (L) 4. and 5., (m) 6. and 7. and (o) 2. and 3. and (5) (a) and 90.12 (1) (a) 5.; to repeal and recreate HFS 90.10 (5) (d) 2. and 90.12 (5); and to create HFS 90.11 (4) (b) 7., (c) 5., (g) 4., (i) 4., (j) 4., (k) 3., (L) 6., (m) 8. and (o) 4. and 90.12 (6), relating to early intervention services for children with developmental needs in the age group from birth up to 3.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

05-13-98 RECEIVED BY LEGISLATIVE COUNCIL.
06-09-98 REPORT SENT TO AGENCY.

RS:PS;jt;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 98-071

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

- a. In s. HFS 90.11 (2) (a) 2., the notation "s." should be inserted before "HSS 65.05 (7)."
- b. In s. HFS 90.12 (5) (d), there should not be a subd. 1., because there is no subd. 2. The "1." should be deleted and the remaining subunits should be renumbered accordingly.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In s. HFS 90.12 (5) (a) 1., the comma following "sub. (6)" on line 5 should be deleted.
- b. In s. HFS 90.12 (5) (b) 2. c., should the notification to the department of the party's consent or refusal to participate in mediation be in writing? If so, the phrase "in writing" should be inserted after the word "department" on line 1 and the Note following subd. 3. should indicate that the party's written notification under subd. 2. c. should be sent to the address indicated in the Note. Finally, the semicolon at the end of subd. 2. c. should be replaced by a period.
- c. In s. HFS 90.12 (5) (e) 3., what specific information is the mediator required to report to the department "for the purpose of administering the mediation program"?
- d. In s. HFS 90.12 (5) (g), there is an extra period at the end of the second sentence. Also, this provision should begin with the phrase "Except as provided in subds. 2. and 3."

e. In s. HFS 90.12 (6), the rule retains, with some modifications, the language in current s. HFS 90.12 (5) relating to resolving disputes by means of a hearing by an impartial decisionmaker. However, the rule analysis does not mention that the hearing process is retained; it only briefly mentions the establishment of a state-level mediation process. In fact, the parenthetical language in the second paragraph of the cover letter to the Rules Clearinghouse may give the impression that the hearing process has been replaced by the state-level mediation process. The analysis should be rewritten to clarify that in addition to creation of the state-level mediation system, the hearing process is retained, with modifications, in a new location in the rule. The analysis should contain a brief explanation of the statewide mediation system and the modified hearing process, the interrelationship between those two dispute resolution mechanisms and when each one is to be used.

f. In s. HFS 90.12 (6) (a) 1., the comma after the "(5)" on line 5 should be deleted.

g. In s. HFS 90.12 (6) (d) 4. e., is the birth to 3 program coordinator the state coordinator or a local coordinator? Will the impartial decisionmaker know to whom and where the decision is to be sent? Perhaps a note with that information should be included in the rule.

h. In s. HFS 90.12 (6) (d) 4. f., it appears that the reference to "par. (d)" should be replaced by a reference to "par. (e)."

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
RENUMBERING, AMENDING, REPEALING AND RECREATING AND
CREATING RULES

To renumber HFS 90.11 (2) (b) 1. e.; to amend HFS 90.03 (28), 90.05 (4) (a), 90.08 (7) (k), 90.11 (1) (c) 1. b., (2) (a) 1. and 2., (b) 1. d., (4) (b) 5. and 6., (c) 3. and 4., (g) 2. and 3., (i) 2. and 3., (j) 2. and 3., (k) 1. and 2., (L) 4. and 5., (m) 6. and 7. and (o) 2. and 3. and (5) (a) and 90.12 (1) (a) 5; to repeal and recreate HFS 90.10 (5) (d) 2. and 90.12 (5); and to create HFS 90.11 (4) (b) 7., (c) 5., (g) 4., (i) 4., (j) 4., (k) 3., (L) 6., (m) 8. and (o) 4. and 90.12 (6), relating to early intervention services for children with developmental needs in the age group from birth up to 3.

Analysis Prepared by the Department of Health and Family Services

This order amends the Department's rules for operation of the Birth to 3 Program under s. 51.44, Stats., to establish a state-level mediation process for resolution of disputes between parents and county administrative agencies, to improve the required documentation by county administrative agencies that "natural environments" are being used to the maximum extent appropriate as the locations for provision of early intervention services, and to make several corrections, updating changes and experienced-based improvements in the rules.

The rule changes relating to how disputes are resolved between parents and county administrative agencies and to documentation of the use of natural environments for provision of early intervention services are being made to incorporate changes made in Part C of the federal Individuals with Disabilities Education Act (IDEA), 20 USC 1400, by Public Law 105-17.

The other changes made in ch. HFS 90 by this rulemaking order are the following:

- Addition of references to federal Public Law 105-17 which recently amended the Individuals with Disabilities Education Act;
- Substitution of Part C for Part H as the federal grant program reference to the Birth to 3 Program in the Individuals with Disabilities Education Act, pursuant to a change made by PL 105-17;
- Deletion of the phrase, "and other early intervention services identified in a child's IFSP" from s. HFS 90.11 (2) (a) 2. That phrase was inadvertently not deleted when ch. HFS 90 was amended, effective May 1, 1997, to provide that fees be charged for non-core services, and therefore is not consistent with the changes made at that time in ch. HFS 90;

- Under s. HFS 90.11 (4), Other Early Intervention Services, the identification of a specific new service under certain types of early intervention services. The new service is “provide consultation to and training of parents, other service providers and community agencies in regard to” the service type. This is added under audiology services, communication services, nursing services, occupational therapy services, physical therapy services, psychological services, social work services, special instruction services and vision services; and
- Insertion of “motor skills” in s. HFS 90.11 (4) (m) 2. to correct an obvious omission.

The Department’s authority to repeal, amend, repeal and recreate and create these rules is found in s. 51.44 (5) (a), Stats. The rules interpret s. 51.44, Stats.

SECTION 1. HFS 90.03 (28) is amended to read:

HFS 90.03 (28) “Part ~~H~~ C” means the federal grant program to help states establish statewide comprehensive systems of early intervention services for children in the age group birth to 3 and their families, which was added to the Individuals with Disabilities Education Act, 20 USC ch. 33, by PL 99-457 and amended by PL 102-119 and PL 105-17.

SECTION 2. HFS 90.05 (4) (a) is amended to read:

HFS 90.05 (4) (a) Any individual or organization having reason to believe that one or more requirements of this chapter or Part ~~H~~ C and its implementing regulations, 34 CFR Pt. 303, are not being met by the department or a county administrative agency or by any other public agency or private provider involved in the early intervention system under agreement with the county administrative agency may complain to the department. The complaint shall be in writing and be signed and shall consist of a statement setting forth the complaint and the facts upon which the complaint is based. The department shall develop procedures to inform parents and other interested individuals and organizations about their right to file a complaint and how to file a complaint.

Note: A complaint under this subsection should be sent to the Birth to 3 Program, Division of Supportive Living, P.O. Box 7851, Madison WI 53707.

Note: The process for resolution of disputes between parents and county administrative agencies is described in s. HFS 90.12 (5).

SECTION 3. HFS 90.08 (7) (k) is amended to read:

HFS 90.08 (7) (k) If the parent chooses not to take part in the evaluation process or development of the report, the service coordinator shall meet with the parent upon completion of the evaluation to discuss the findings and conclusions of the EI team. The service coordinator shall document in the child’s early intervention record why the parent was not involved and the steps taken to share the findings and conclusions of the EI team with the parent.

SECTION 4. HFS 90.10 (5) (d) 2. is repealed and recreated to read:

HFS 90.10 (5) (d) 2. The locations where early intervention services will be provided. This list shall be accompanied by a statement that describes the environments in which early intervention services are provided, with justification if a specific early intervention service will not be provided in a natural environment.

SECTION 5. HFS 90.11 (1) (c) 1. b. and (2) (a) 1. and 2. and (b) 1. d. are amended to read:

HFS 90.11 (1) (c) 1. b. Part ~~H~~ C and the federal implementing regulations, 34 CFR Pt. 303, and this chapter; and

(2) (a) General conditions for early intervention services. 1. Appropriate early intervention services for an eligible child and the child's family, provided to the maximum extent appropriate to the needs of the child in natural environments, including the home and community settings in which children without disabilities participate, shall be based on the developmental needs of the child and shall be provided with the written consent of the parent. Services shall be provided in collaboration with the parent, by qualified personnel, and in compliance with this chapter and Part ~~H~~ C requirements.

2. The county administrative agency shall provide or arrange for the provision of early intervention core services ~~and other early intervention services identified in a child's IFSP~~ at no cost to the child's family and shall provide or arrange for the provision of other early intervention services identified in the child's IFSP. The county administrative agency shall determine parental liability for the cost of the other early intervention services in accordance with ch. HFS 1. Parents may satisfy any liability not met by third party payers if the parents pay the amount determined in accordance with the family support payment formula in HSS 65.05 (7).

(b) General role of early intervention service providers. 1. d. When a member of the team, participate in the EI team's assessment of a child, any family-directed assessment of the family and development of integrated goals and outcomes for the IFSP; ~~and~~

SECTION 6. HFS 90.11 (2) (b) 1. e. is renumbered 90.11 (2) (b) 1. f.

SECTION 7. HFS 90.11 (2) (b) 1. e. is created to read:

HFS 90.11 (2) (b) 1. e. When a member of the team, train other team members to implement aspects of his or her discipline while retaining professional accountability; and

SECTION 8. HFS 90.11 (4) (b) 5. and 6. are amended to read:

HFS 90.11 (4) (b) 5. Provision of services for prevention of hearing loss; ~~and~~

6. Determination of the child's need for individual amplification, including selecting, fitting and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices; and

SECTION 9. HFS 90.11 (4) (b) 7. is created to read:

HFS 90.11 (4) (b) 7. Provision of consultation to and training of parents, other service providers and community agencies in regard to audiology services.

SECTION 10. HFS 90.11 (4) (c) 3. and 4. are amended to read:

HFS 90.11 (4) (c) 3. Services for the habilitation, rehabilitation or prevention of communicative or oropharyngeal disorders and delays in development of communication skills, including services directed at the acquisition of sign language, the development of auditory awareness skills and speech production and the use of augmentative communication devices; ~~and~~

4. Development of augmentation devices or systems, including communication boards and sign language-; and

SECTION 11. HFS 90.11 (4) (c) 5. is created to read:

HFS 90.11 (4) (c) 5. Provision of consultation to and training of parents, other service providers and community agencies in regard to communication services.

SECTION 12. HFS 90.11 (4) (g) 2. and. 3. are amended to read:

HFS 90.11 (4) (g) 2. Provision of nursing care to prevent health problems, restore or improve functioning and promote optimal health and development. This includes identification of family concerns and coordination of available resources to meet those concerns; ~~and~~

3. Administration of medications, treatments and regimens prescribed by a physician licensed under ch. 448, Stats.; and

SECTION 13. HFS 90.11 (4) (g) 4. is created to read:

HFS 90.11 (4) (g) 4. Provision of consultation to and training of parents, other service providers and community agencies in regard to nursing services.

SECTION 14. HFS 90.11 (4) (i) 2. and 3. are amended to read:

HFS 90.11 (4) (i) 2. Adaptation of the environment, and selection, design and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; ~~and~~

3. Prevention or minimization of the impact of initial or future impairment, delay in development or loss of functional ability-; and

SECTION 15. HFS 90.11 (4) (i) 4. is created to read:

HFS 90.11 (4) (i) 4. Provision of consultation to and training of parents, other service providers and community agencies in regard to occupational therapy services.

SECTION 16. HFS 90.11 (4) (j) 2. and 3. are amended to read:

HFS 90.11 (4) (j) 2. Obtaining, interpreting and integrating information appropriate to program planning, to prevent, alleviate or compensate for movement dysfunctions and related functional problems; ~~and~~

3. Providing individual and group services and treatment to prevent, alleviate or compensate for movement dysfunction and related functional problems; and

SECTION 17. HFS 90.11 (4) (j) 4. is created to read:

HFS 90.11 (4) (j) 4. Provision of consultation to and training of parents, other service providers and community agencies in regard to physical therapy services.

SECTION 18. HFS 90.11 (4) (k) 1. and 2. are amended to read:

HFS 90.11 (4) (k) 1. Administering psychological and developmental tests and other assessment procedures, interpreting results, and obtaining, integrating and interpreting information about child behavior and child and family conditions related to learning, mental health and development; ~~and~~

2. Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, and parent education; and

SECTION 19. HFS 90.11 (4) (k) 3. is created to read:

HFS 90.11 (4) (k) 3. Provision of consultation to and training of parents, other service providers and community agencies in regard to psychological services.

SECTION 20. HFS 90.11 (4) (L) 4. and 5. are amended to read:

HFS 90.11 (4) (L) 4. Working with problems in a child's and family's living situation, at home, in the community and at any center where early intervention services are provided, that affect the child's maximum utilization of early intervention services; ~~and~~

5. Identifying, mobilizing and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services; and

SECTION 21. HFS 90.11 (4) (L) 6. is created to read:

HFS 90.11 (4) (L) 6. Provision of consultation to and training of parents, other service providers and community agencies in regard to social work services.

SECTION 22. HFS 90.11 (4) (m) 2., 6. and 7. are amended to read:

HFS 90.11 (4) (m) 2. Designing learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas including cognitive processes, communication, motor skills and social interaction;

6. Working with other providers to develop an understanding of the child's disability and the impact of that disability on the child's development; ~~and~~

7. Providing support and consultation to child care providers and others in integrated child care settings; and

SECTION 23. HFS 90.11 (4) (m) 8. is created to read:

HFS 90.11 (4) (m) 8. Provision of consultation to and training of parents, other service providers and community agencies in regard to special instruction services.

SECTION 24. HFS 90.11 (4) (o) 2. and 3. are amended to read:

HFS 90.11 (4) (o) 2. Referral for medical and other professional services necessary for habilitation or rehabilitation of visual functioning disorders, or both; ~~and~~

3. Communication skills training for all environments, visual training, independent living skills training and additional training to activate visual motor abilities; and

SECTION 25. HFS 90.11 (4) (o) 4. is created to read:

HFS 90.11 (4) (o) 4. Provision of consultation to and training of parents, other service providers and community agencies in regard to vision services.

SECTION 26. HFS 90.11 (5) (a) is amended to read:

HFS 90.11 (5) (a) Location of services. To the maximum extent appropriate to the needs of the child, early intervention services shall be provided in the child's natural environments, including home and community settings where children without disabilities participate. A setting other than a natural environment may be used only when early intervention outcomes cannot be satisfactorily achieved for the child in a natural environment. If reasons exist for providing services in settings other than the child's natural environments, those reasons shall be documented in the child's IFSP.

SECTION 27. HFS 90.12 (1) (a) 5. is amended to read:

HFS 90.12 (1) (a) 5. All procedural safeguards the parent has under this chapter, including the right to ~~file a complaint~~ participate in mediation and the right to request a hearing regarding the proposed or refused action.

SECTION 28. HFS 90.12 (5) is repealed and recreated to read:

HFS 90.12 (5) PROCEDURES FOR RESOLUTION OF DISPUTES - MEDIATION. (a) Definitions. In this subsection:

1. "Dispute" means any disagreement between parties concerning a county administrative agency's proposal or refusal to initiate or change the evaluation process or eligibility determination of the child or to provide appropriate early intervention services for the child and the child's family. "Dispute" includes a disagreement in which any other process, including a hearing under sub. (6) or litigation, has been requested or commenced. X 5

2. "Mediation" means a dispute resolution process in which a neutral third person, who has no power to impose a decision if the parties do not agree to settle the case, helps the parties reach an agreement by focusing on the key issues in the dispute, exchanging information between the parties and exploring options for settlement.

3. "Party" means the parent of a child who is the subject of a dispute or the county administrative agency that is responsible for providing early intervention services to the child.

(b) Request for mediation. 1. A party may request the department to arrange for mediation of a dispute at any time. The request shall be in writing, shall briefly describe the dispute and shall identify the parties. Both parties may jointly request mediation.

2. If only one of the parties requests mediation, within 5 business days after receiving the request the department shall notify the other party in writing of the request for mediation. The notice shall include all of the following:

a. An explanation of the mediation process and its advantages;

b. A statement that participation in mediation is voluntary and that agreement or refusal to participate will not affect the resolution of the dispute in any pending or potential adjudicative process, or the timing of that process, unless the parties agree otherwise; and

c. A request that the party notify the department within 5 business days after receiving the notice regarding the party's consent or refusal to participate in mediation; X 5

3. If the department does not receive a timely response to the notice under subd. 2. or if the other party notifies the department of its refusal to participate in mediation, the department shall notify in writing the party that requested mediation that the other party has not responded or refuses to participate.

Note: Send a request for mediation to Birth to 3 Program, Division of Supportive Living, P.O. Box 7851, Madison, WI 53707.

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(c) Appointment of mediator. 1. a. A party that requests mediation may nominate a mediator from the roster under par. (d). If a party nominates a mediator, the department shall include in the notice under par. (b)1. the name of the nominated mediator.

b. If both parties nominate the same person as mediator, the department shall appoint that person as mediator if he or she is on the roster under par. (d) and available to mediate.

c. If both parties request mediation but neither party nominates a mediator, the department shall propose a mediator from the roster under par. (d).

d. If both parties consent to mediation but the party that requests mediation does not nominate a mediator, the nominated mediator is not available or the other party does not consent to the appointment of the nominated mediator, the department shall propose a mediator from the roster under par. (d).

2. Whenever the department proposes a mediator under subd. 1.c. or d., the department shall send information about the mediator's training and experience to both parties. Within 3 business days after receiving the information, either party may request the department to propose a different mediator from the roster under par. (d).

(d) Roster of mediators. ① *e is no 2 #2* In collaboration with the department of public instruction, the department shall maintain a roster of mediators qualified to resolve disputes. The department may include a person on the roster if all of the following apply:

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a. The department determines that the person has the appropriate skills and knowledge to act as a mediator under this section;

b. The person participates in a training program of at least 5 days' duration that has been approved by the department;

c. The person consents to be observed by a department representative at any mediation session; and

d. The person participates in at least one day of additional training approved by the department each year.

(e) Mediation. 1. Unless both parties agree otherwise, mediation shall commence within 21 days after the mediator is appointed and shall not delay hearings or civil action related to the dispute.

2. The parents of the child and 2 representatives of the county administrative agency may participate in mediation. With the consent of both parties, other persons may participate in mediation. With the consent of both parties, a department representative may observe the mediation sessions.

3. At the commencement of mediation, the mediator shall inform the parties of the information that is required to be reported to the department for the purpose of administering the mediation program. The department may not require a mediator to disclose the substance of any matter discussed or communication made during mediation. *- such as*

4. Either party may recess a mediation session to consult advisors, whether or not present, or to consult privately with the mediator. The mediator may recess a mediation session to consult privately with a party. If the mediator does so, he or she shall disclose the general purpose of the consultation but may not reveal other information about the consultation without the consent of the party consulted.

5. Unless both parties and the mediator agree otherwise, no person may record a mediation session.

6. The mediator and either party may withdraw from mediation at any time. *limited*

7. No adverse inference may be drawn by any hearing officer or adjudicative body from the fact that a party did not consent to mediation, that a mediator or party withdrew from mediation or that mediation did not result in settlement of the dispute.

(f) Resolution or agreement. If the parties resolve the dispute or a portion of the dispute, or agree to use another procedure to resolve the dispute, the mediator shall ensure that the resolution or agreement is reduced to writing, that it is signed by the parties and that a copy is given to each party. The resolution or agreement is legally binding upon the parties. *and*

(g) Mediator compensation. 1. *Except as provided in subd. 3* The department is responsible for the costs of mediation services. The department shall establish a schedule for the compensation of mediators and the reimbursement of their expenses. The department shall pay mediators from the appropriation under s. 20.435 (6) (m), Stats. *03*

3. "Party" means the parent of a child who is the subject of a dispute or the county administrative agency that is responsible for providing early intervention services to the child.

(b) Filing of request for hearing. A parent may request a hearing to challenge a county administrative agency's proposal or refusal to initiate or change the evaluation process or eligibility determination of the child or to provide appropriate early intervention services for the child and the child's family by filing a written request with the department which identifies the action or inaction which is the subject of the dispute and the parent's reasons for objecting to the action or inaction.

Note: Send a request for a hearing to Birth to 3 Program, Division of Supportive Living, P.O. Box 7851, Madison, WI 53707.

(c) Referral of dispute to impartial decisionmaker. 1. Upon receipt of a written request from a parent under subd. 2., the department shall promptly appoint an impartial decisionmaker.

2. After it appoints an impartial decisionmaker, the department shall send to the county administrative agency and the parent a copy of the parent's written request with the name and address of the impartial decisionmaker.

3. Upon receipt of a parent's request for a hearing, the department shall inform the parent about the availability of mediation under sub. (5) and about any free or low-cost legal services that might be available to the parent.

4. The county administrative agency is responsible for the costs of a hearing, including the salaries of the impartial decisionmaker and stenographer.

(d) Conduct of hearing. 1. Both parties at a hearing may be accompanied by counsel and advised by counsel and by individuals with special knowledge of or training in early intervention services for eligible children.

2. Both parties at a hearing may present evidence, compel the attendance of witnesses and the production of relevant documents and confront and cross-examine witnesses.

3. Either party at a hearing may prohibit the introduction of any evidence that was not disclosed to the other party at least 5 days before the hearing.

4. The impartial decisionmaker shall do all of the following:

a. Schedule a hearing at a time and place that is reasonably convenient for the parent and shall notify the parties accordingly;

- b. Serve as hearing officer;
- c. Attempt to reach a timely resolution of the dispute;
- d. Look at the record, listen to testimony, examine evidence and make a decision about the dispute;
- e. Issue a written decision, and mail it to both parties and to the birth to 3 program coordinator not later than 45 days after receipt of the request for hearing under par. (b); and

Stat. action?

f. Produce an official record of the hearing and, after 30 days from the date of the decision under subd. 4. e., forward the hearing record to ~~the department~~ where it shall be available to either party if civil action is sought under par. (d). *(e)*

5. The impartial decisionmaker may grant an extension of the time period limit under subd. 3 or 4. e. at the request of either party. If an extension is granted, the impartial decisionmaker shall include that extension and the reason for it in the record prepared under subd. 4. f.

(e) Civil action. Either party aggrieved by the decision under par. (d) 4. e. may bring a civil action in state or federal court. An action filed in circuit court shall be commenced within 30 days after the date of the written decision. Pursuant to 20 USC 1439 (a) (1) and s. 51.44 (1m) and (5) (a) 4., Stats., the court shall receive the records of the administrative hearing, shall hear additional evidence at the request of a party and, basing its decision on the preponderance of evidence, shall grant whatever relief the court determines is appropriate. Sections 227.52 to 227.58, Stats., do not apply to actions under this paragraph.

stat. act

(f) Services pending decision on a dispute. Pending the decision on a dispute, unless the county administrative agency and parent agree otherwise, a child shall continue to receive the early intervention services that were provided before the dispute was filed. If the dispute involves an application for initial services, the child shall receive any services that are not in dispute.

The rules contained in this order shall take effect on the first day of the month following their publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2), Stats.

Wisconsin Department of Health and
Family Services

Dated:

By: _____
Joseph Lecaan
Secretary

SEAL: