

## Office of the Secretary of Defense

## Pt. 57, App. F

### B. RESPONSIBILITIES

(1) Advise the USD(P&R) of unmet needs within the Department of Defense in the provision of special services to infants, toddlers, and children with disabilities.

(2) Advise and assist the Military Departments in the performance of their responsibilities, particularly the identification of appropriate resources and agencies for providing EIS and promoting inter-Component agreements.

(3) Advise and assist the DoD schools systems on the provision of special education and related services, and on transition of toddlers with disabilities to preschool services.

### C. ACTIVITIES

The DoD-AP shall perform the following activities:

(1) Review information about improvements in service provided to children with disabilities, ages birth through 21, inclusive, in the Department of Defense.

(2) Receive and consider comments from parents, students, professional groups, and individuals with disabilities.

(3) Review policy memoranda on effective inter-Department and inter-Component collaboration.

(4) Review the findings of fact and decisions of each impartial due process hearing conducted under appendix G of this part.

(5) Review reports of technical assistance and monitoring activities.

(6) Make recommendations based on program and operational information for changes in policy and procedures and in the budget, organization, and general management of the programs providing special services.

(i) Identify strategies to address areas of conflict, overlap, duplication, or omission of services.

(ii) When necessary, establish committees for short-term purposes comprised of representatives from parent, student, professional groups, and individuals with disabilities.

(iii) Assist in developing and reporting such information and evaluations as may assist the Department of Defense.

(iv) Comment publicly on rules or standards about EIS for infants and toddlers, ages birth through 2 years, and special education of children with disabilities, ages 3 through 21 years, inclusive.

(v) Perform such other tasks as may be requested by the USD(P&R).

### D. REPORTING REQUIREMENTS

(1) Submit an annual report of the DoD-AP's activities and suggestions to the DoD Coordinating Committee, by July 31 of each year.

(2) That report is exempt from formal review and licensing under section 5 of DoD Instruction 7750.7

## APPENDIX E TO PART 57—DoD-CC ON EARLY INTERVENTION, SPECIAL EDUCATION, AND RELATED SERVICES

### A. COMMITTEE MEMBERSHIP

The DoD-CC shall meet at least yearly to facilitate collaboration in early intervention, special education, and related services in the Department of Defense. The DoD-CC shall consist of the following members, appointed by the Secretary of Defense or designee:

(1) A representative of the USD(P&R) or designee, who shall serve as the Chair.

(2) Representatives of the Secretaries of the Military Departments.

(3) A representative of the TRICARE Management Activity.

(4) Representatives from the DoD school systems.

(5) A representative from the GC, DoD.

### B. RESPONSIBILITIES

(1) Advise and assist the USD(P&R) in the performance of his or her responsibilities.

(2) At the direction of the USD(P&R), advise and assist the Military Departments, and the DoD school systems in the coordination of services among providers of early intervention, special education, and related services.

(3) Ensure compliance in the provision of EIS for infants and toddlers and special education and related services for children ages 3 through 21 years, inclusive.

(4) Review the recommendations of the DoD-AP to identify common concerns, ensure coordination of effort, and forward issues requiring resolution to the USD(P&R).

(5) Assist in the coordination of assignments of sponsors who have children with disabilities who are or who may be eligible for special education and related services in the DoDDS or EIS through the Military Departments.

(6) Perform other duties as assigned by the USD(P&R), including monitoring the delivery of services under this part.

## APPENDIX F TO PART 57—PARENT AND STUDENT RIGHTS

### A. PARENTAL CONSENT

(1) The consent of a parent of a child with a disability or suspected of having a disability shall be obtained before any of the following:

(i) Initiation of formal evaluation procedures or re-evaluation.

(ii) Provision of EIS or initial educational placement.

(iii) Change in EIS or educational placement.

(2) If a parent of an infant or toddler (birth through 2 years of age) does not provide consent for participation in all EIS, the services shall still be provided for those interventions to which a parent does give consent.

(3) If the parent of a child 3 through 21 years, inclusive, refuses consent to initial evaluation, reevaluation, or initial placement in a special education program, the DoD school system or the parent may do the following:

(i) Request a conference between the school and parents.

(ii) Request mediation.

(iii) Initiate an impartial due process hearing under appendix G of this part to show cause as to why an evaluation or placement in a special education program should or should not occur without such consent. If the hearing officer sustains the DoD school system's position in the impartial due process hearing, the DoD school system may evaluate or provide special education and related services to the child without the consent of a parent, subject to the further exercise of due process rights.

(4) The Department of Defense shall protect the child's rights, by assigning an individual to act as a surrogate for the parents, when after reasonable effort the Department of Defense cannot locate the parents.

#### B. PROCEDURAL SAFEGUARDS

Parents of children with disabilities are afforded the following procedural safeguards, consistent with appendix G of this part to ensure that their children receive appropriate special services:

(1) The timely administrative resolution of parental complaints, including hearing procedures with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of EIS for an infant or toddler, age birth through 2 years, or a free appropriate public education for the child, age 3 through 21 years, inclusive.

(2) The right to confidentiality of personally identifiable information under DoD Directive 5400.11.

(3) The right to provision of written notice and to have furnished consent prior to the release of relevant information outside the Department of Defense.

(4) The right to determine whether they, their child, or other family members shall accept or decline any portion of EIS, without jeopardizing the provision of other EIS.

(5) The opportunity to examine records on assessment, screening, eligibility determinations, and the development and implementation of the IFSP and IEP.

(6) *Written Notice.* The right to prior written notice when the EDIS or school proposes, or refuses, to initiate or change the identi-

fication, evaluation, placement or provision of special services to the child with a disability.

(i) The notice must be in sufficient detail to inform the parents about:

(A) The action that is being proposed or refused;

(B) The reasons for taking the action;

(C) All procedural safeguards that are available under this part as described in paragraph B.(7) of this appendix; and

(D) Conflict resolution procedures, including a description of mediation and due process hearings procedures and applicable timelines, as defined in appendix G of this part.

(ii) The notice must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(7) *Procedural Safeguards Notice.* Parents must be given a Procedural Safeguards Notice, at a minimum, upon initial referral for evaluation, upon each notification of an IFSP or IEP meeting, upon reevaluation of the child, and upon receipt of a request for due process.

(i) The procedural safeguards notice must include a full explanation of all of the procedural safeguards available with regard to the matters in paragraph B.(7) of this appendix including the right to:

(A) Independent educational evaluation for school-aged children.

(B) Prior written notice.

(C) Parental consent.

(D) Access to educational or early intervention records.

(E) Opportunity to present complaints.

(F) The child's placement during pendency of due process proceedings.

(G) Procedures for children (3 through 21 years, inclusive) who are subject to placement in an interim alternative educational setting.

(H) Requirements for unilateral placement by parents of children in private schools at public expense.

(I) Mediation.

(J) Due process hearings, including requirements for disclosure of evaluation results and recommendations.

(K) Civil actions.

(L) The DoD complaint system, including a description of how to file a complaint and the timelines under those procedures.

(ii) The procedural safeguards notice must be:

(A) Written in language understandable to the general public.

(B) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the school system shall take steps to ensure that:

(i) The notice is translated orally or by other means to the parent in his or her native language or other mode of communication.

(ii) The parent understands the content of the notice; and

(iii) There is written evidence that the requirements in paragraph B.(7)(ii)(A) and paragraph B.(7)(ii)(B) of this appendix have been met.

(8) *Independent Educational Evaluation.* A parent of a child (3 through 21 years, inclusive) may be entitled to an independent educational evaluation of the child at the expense of the DoD school system if the parent disagrees with the DoD school system's evaluation of the child.

(i) If a parent requests an independent educational evaluation at the school system's expense, the DoD school system must, without unnecessary delay, either:

(A) Initiate an impartial due process hearing to show that its evaluation is appropriate; or

(B) Ensure an independent evaluation is provided at the DoD school system's expense. Unless the DoD school system demonstrates in an impartial due process hearing that an independent evaluation obtained by the parent did not meet DoD school system criteria. In such cases, the parents must bear the cost of the evaluation.

(ii) If the DoD school system initiates a hearing and the decision is that the DoD school system's evaluation is appropriate, the parents still have the right to an independent evaluation, but not at the school system's expense.

(iii) An independent educational evaluation provided at the DoD school system's expense must do the following:

(A) Conform to the requirements of this part.

(B) Be conducted, when possible, in the area where the child resides.

(C) Meet DoD standards governing persons qualified to conduct an educational evaluation, including an evaluation for related services.

(9) The DoD school system, the CSC, and a hearing officer appointed under this part shall consider any evaluation report presented by a parent.

(10) *Access to Records.* The parents of a child with a disability shall be afforded an opportunity to inspect and review educational records about the identification, evaluation, and educational placement of the child, and the provision of a free public education for the child.

(11) *Due Process Rights.* (i) The parent of a child with a disability, the Military Department, or the DoD school system has the opportunity to file a written petition for an impartial due process hearing under appendix G of this part. The petition may concern issues affecting a particular child's identi-

fication, evaluation, or placement, or the provision of EIS or a free and appropriate public education.

(ii) While an impartial due process hearing or judicial proceeding is pending, unless the EDIS or the DoD school system and the parent of the child agree otherwise, the child shall remain in his or her present educational setting, subject to the disciplinary procedures prescribed in section H of appendix B of this part.

(12) *Transfer of Parental Rights at Age of Majority.* (i) In the DoD school systems, a child reaches the age of majority at age 18.

(ii) When a child with a disability reaches the age of majority (except for a child with a disability who has been determined to be incompetent under State law) the rights accorded to parents under this Part transfer to the child.

(iii) When a child reaches the age of majority, the DoD school system shall notify the individual and the parents of the transfer of rights.

(iv) When a child with a disability who has reached the age of majority, who has not been determined to be incompetent, but who does not have the ability to provide informed consent with respect to his or her educational program, the Department of Defense shall establish procedures for appointing the parent of the child to represent the educational interests of the child throughout the period of eligibility for special education services.

#### APPENDIX G TO PART 57—MEDIATION AND HEARING PROCEDURES

##### A. PURPOSE

This appendix establishes requirements for the resolution of conflicts through mediation and impartial due process hearings. Parents of infants, toddlers, and children who are covered by this Part and, as the case may be, the cognizant Military Medical Department or the DoD school system are afforded impartial mediation and/or impartial due process hearings and administrative appeals about the provision of EIS, or the identification, evaluation, educational placement of, and the FAPE provided to, such children by the Department of Defense, in accordance with sections 927 and 1400 of 20 U.S.C. and section 2164 of 10 U.S.C.

##### B. MEDIATION

(1) Mediation may be initiated by either a parent or the Military Medical Department concerned or the DoD school system to resolve informally a disagreement on any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to such child.