

## EARLY INTERVENTION (EI): QUESTIONS AND ANSWERS

August 2022

Young children who experience delays in growth and development, even as young as birth, are entitled to receive free educational services to help them develop and gain skills for later school success. Parents should be included in the planning and delivery of those services. This fact sheet provides information on how parents can make sure their young children get the services they need.

### Special Considerations

While there may have been many changes regarding where and how your child received Early Intervention (EI) services due to complications related to the COVID-19 pandemic, your child still has almost all the same rights to these services. Despite these rights, your child's learning may have been disrupted or impacted by barriers created by the pandemic, and in that case, your child may be entitled to compensatory education services, COVID Compensatory Services (CCS), or other supports to address this disruption.

**COVID Compensatory Services:** Because nearly all students with disabilities were impacted by barriers to education created, or made worse, by the pandemic, all school districts in Pennsylvania are required to determine the services that are necessary to make up for the education disruption during this time. These services are called COVID Compensatory Services (CCS).

- ➔ Your child's IEP team should have met with you to review data on your child's skills to compare with data from before the pandemic. **If this meeting did not occur, you should request it in writing.**
- ➔ If your child did not make meaningful progress or lost skills, the IEP team should develop a plan with you to provide CCS. PDE has a suggested [plan](#) for deciding how much CCS your child is owed.
- ➔ If you disagree with the plan for CCS, or your IEP team does not agree to meet to consider such a plan, you can take any of the advocacy steps described in this fact sheet.
- ➔ **Compensatory education:** Your child may also have a right to receive make-up services, called compensatory education, for the time your child was deprived of a free appropriate public education. This includes any services required by your child's IEP that were not provided due to pandemic-related barriers. If you believe that your child did not receive required services, you can request compensatory education. Parents have the right to disagree with the decision regarding compensatory education. The rights and advocacy tips discussed in this fact sheet apply.

**Right to disagree:** If you disagree with the plan for your child, you should tell the EI provider about your concerns. **Your child should not give up or waive the right to EI services due to COVID-19.**

### WHAT IS EARLY INTERVENTION?

Early Intervention (EI) is a free program for young children (birth to age 5) who have delays in their growth and development or have disabilities. The program provides services to help children grow and gain skills so that they are ready for school with their peers. There are two programs based on age: Infant Toddler Early Intervention (Infant Toddler EI) for ages 0-3 and Preschool Early Intervention (Preschool EI).

## HOW DO I GET EARLY INTERVENTION SERVICES FOR MY CHILD?

You have the right to ask for an evaluation of your child:

- If your child is under the age of 3, you should contact your county's mental health office and ask for an evaluation.<sup>1</sup> Once you agree to the evaluation, it must be finished in 45 calendar days.<sup>2</sup>
- If your child is 3 or older, but not yet old enough to attend kindergarten or first grade, and you live in Philadelphia or Chester City, you should contact [Elwyn Early Learning Services](#) to ask for an evaluation.<sup>3</sup> Once you agree to the evaluation, it must be finished in 60 calendar days.<sup>4</sup> You will receive a written summary of the tests and recommendations.
- If your child is 3 or older, but not yet old enough to attend kindergarten or first grade, and you live anywhere else in Pennsylvania, you should contact your county's Intermediate Unit (IU) and ask for an evaluation.<sup>5</sup> Once you agree to the evaluation, it must be finished in 60 calendar days.<sup>6</sup> You will receive a written summary of the tests and recommendations.

If you need help finding the right office for Early Intervention, you can call the statewide CONNECT Helpline at 1-800-692-7288.

Your child's doctor or other service provider may also request an evaluation on your behalf.

## IS MY CHILD ELIGIBLE FOR EARLY INTERVENTION SERVICES?

EI eligibility changes depending on your child's age.<sup>7</sup>

### Infant Toddler EI

Age: your child must be age birth to age 3

- Does your child have a developmental delay? OR
- Does your child have a long-term health problem? OR
- Does the evaluator believe your child needs EI?

### Preschool EI

Age: your child must be age 3 to school age

- Does your child have a developmental delay or disability? AND
- Because of that delay or disability, does your child need specialized instruction?

## WHAT IF MY INFANT OR TODDLER DOES NOT HAVE A DIAGNOSED DEVELOPMENTAL DELAY?

To qualify for Infant Toddler EI, your child does not need to have a diagnosed developmental delay or disability. The evaluator who tests your child for EI may use informed clinical opinion to qualify your child for Infant Toddler EI.<sup>8</sup> This involves the evaluator using their knowledge and experience about children to determine who should receive Infant Toddler EI.<sup>9</sup> This is usually used when other testing produces confusing results.<sup>10</sup>

A 2-year-old plays normally when they are alone but hits and bites when around other children. Their testing does not show a developmental delay because their behavior differences are not fully measured by the testing. The evaluator uses their experience to find the child eligible for Infant Toddler EI because these behaviors make it very hard for the child to play or interact with other children.

## WHAT HAPPENS AFTER THE EVALUATION?

After the evaluation, you will meet with the evaluator and other professionals to decide whether your child is eligible for EI services using the questions listed above in this fact sheet. If your child is eligible for EI services, the team will create a plan for providing services.

Infant Toddler EI: The plan created for an infant or toddler is called an **Individualized Family Service Plan (IFSP)**. A meeting will be scheduled to decide which services your child needs within 45 calendar days from when you agreed to the evaluation.<sup>11</sup>

Preschool EI: The plan created for a preschooler is called an **Individualized Education Program (IEP)**. The IU or Elwyn will schedule a meeting within 30 calendar days to write the IEP with you.<sup>12</sup>

EI services must start within 14 calendar days of the completion of an IFSP or IEP.<sup>13</sup>

## WHAT IF MY INFANT OR TODDLER DOES NOT QUALIFY FOR EI?

Parents of children under age 3 who do not qualify but who may be “at risk” of developmental delays have a right to participate in a follow-up process where evaluators will contact the family again in the future.<sup>14</sup> This program is supposed to catch developmental delays if and when they occur. Examples of children who qualify as “at-risk” include those experiencing homelessness, in foster care, cared for in neonatal care units of hospitals, born to mothers struggling with addiction, or with confirmed dangerous levels of lead poisoning.<sup>15</sup>

## WHERE WILL MY CHILD RECEIVE EI SERVICES?

The location of EI services is called **placement**.

Infants and toddlers usually receive EI services in the **natural environment**.<sup>16</sup> The natural environment is where your child would spend the day if she did not have a developmental delay.<sup>17</sup>

Home-based programs are often considered the natural environment because the home is where many young children, with or without disabilities, are during the day.

Preschoolers receive EI services in the **least restrictive environment**. This means EI should be delivered in the early learning environment where your child would otherwise be. This is usually a day care, a public or private pre-kindergarten program, or a Head Start program. Generally, the Intermediate Unit does not have to pay for this type of placement.<sup>18</sup> A special preschool or classroom for children with disabilities is only allowed if the nature or severity of your child's developmental delay or disability would prevent them from doing well in a typical preschool.<sup>19</sup> For preschoolers, home-based programs may be used; however, early learning programs are usually the most appropriate.

Usually, an Intermediate Unit can be required to pay for a special program if chosen as a placement.<sup>20</sup> Generally, placements focus on the type of environment in which the child will learn (for example, the structure, staff-to-student ratio, or other aspects that make the program different from a regular preschool).<sup>21</sup> As a result, the IU can choose among multiple programs that can offer the same type of learning environment for your child. However, a special program cannot be chosen simply because it is the cheapest or most convenient for the county or IU. It must be based on your child's needs. As a result, you do not necessarily get to choose the specific program, but you do get to help decide the type of program. If you disagree with the type of program chosen, you can dispute the decision as discussed below.

## HOW MANY HOURS AND DAYS OF EI SERVICES CAN MY CHILD RECEIVE?

Infant Toddler EI is usually year-round. For preschoolers, the length of the program depends on the needs of the child as determined by the IEP team, of which you are a part.<sup>22</sup>

Most preschool agencies operate using “stretch calendars.” Stretch calendars spread the program (which usually ranges from around 160 to 200 days) over the year so that there is no long summer break. Programs that run during breaks are called “extended school year” programs and should be considered if children would lose their skills during breaks.<sup>23</sup> If there is disagreement over whether a child can make meaningful progress without fewer breaks in programming, parents can use the dispute resolution options discussed below.

## WHAT CAN I DO IF I DISAGREE WITH A DECISION OF MY EARLY INTERVENTION AGENCY?

You have several options if you disagree with a decision made by your county or Intermediate Unit about the EI services for your child. You can challenge these decisions by requesting a formal meeting, IEP/IFSP facilitation, mediation, or an impartial hearing.

The **formal meeting** is only available for infants and toddlers and should be held with county administrative staff to discuss and resolve the disagreement.<sup>24</sup>

**IEP/IFSP facilitation** is a voluntary process that can be used when you and the county or Intermediate Unit think a neutral third party would help facilitate the drafting of the child's IEP or IFSP.<sup>25</sup>

If you select **mediation**, a trained mediator will try to help your family and the agency resolve the disagreement without the need for a formal hearing.<sup>26</sup>

**Impartial hearings** can also be requested to challenge a placement or services. They are conducted by a state-appointed hearing officer who is not connected with your Early Intervention agency.<sup>27</sup> For more information on IEP facilitation, mediation, or an impartial hearing, go to the website for the [Office For Dispute Resolution](#).

You can use mediation or an impartial hearing described above, or you can submit a state complaint.<sup>28</sup> To file a complaint, you can complete and submit this simple [form](#) and submit it to the Bureau of Early Intervention Services and Family Supports (BEISFS). You can submit the form by fax at 717-346-9330 or by email at [ra-ocintervention@state.pa.us](mailto:ra-ocintervention@state.pa.us). To use this complaint system, a violation must have occurred within the year prior to your submitting the complaint.<sup>29</sup> BEIS will then investigate and send you a report within 60 days.<sup>30</sup> If the investigation finds problems, the state will require the county or IU to fix the problem.

## WHAT HAPPENS WHEN MY CHILD TURNS 3 AND AGES OUT OF INFANT AND TODDLER EARLY INTERVENTION?

**Transition Plan:** To ensure a smooth transition, the IFSP for each toddler who is turning 3 should include a **transition plan**. The transition plan identifies the transition services that will be provided to the child and family.<sup>31</sup> Transition services include support and training for how to prepare your child for changes in the learning environment and service delivery as a preschooler.

**Evaluation:** With your permission, your county will send evaluation and assessment data, IFSPs, and other information to the Intermediate Unit.<sup>32</sup> Between 90 days and six months before your child turns 3, the county should schedule a “transition meeting” with you and the IU to plan for the child’s future.<sup>33</sup> The meeting should be scheduled at a time and location that works for everyone.

If the Intermediate Unit proposes to change the child’s program, and you do not agree, you can use any of the steps above, including an impartial hearing. The preschool agency must provide the child with all of the services from the prior IFSP while the dispute goes through the hearing process.<sup>34</sup>

## HOW DOES TRANSITION WORK WHEN MY CHILD IS READY TO START SCHOOL?

For children within one year of kindergarten, the IEP should contain goals and objectives to assist with that transition.<sup>35</sup>

**Transition Meeting:** By the end of February prior to the child entering kindergarten, the IU, the family, and the school district should meet. This meeting is sometimes called a transition meeting. The transition meeting can, but does not have to be, an IEP team meeting.

The meeting is meant to resolve two big decisions:

1. First, whether the child should go to kindergarten or remain in EI for another year. This is done with an “Intent to Register” form, which also gives the IU permission to send your child’s records to the district.

2. Second, to determine whether to keep the existing IEP for kindergarten or to reevaluate your child for school-age eligibility.<sup>36</sup> If a reevaluation is needed, you should be given a “Permission to Evaluate” form to sign and return. This form must be your native language if English is not your first language.

**Evaluation:** After you agree, the district has 60 days to evaluate your child and give you the written evaluation report.<sup>37</sup> The district must then schedule an IEP team meeting within the next 30 days to develop the IEP for the next school year.<sup>38</sup> The process should be complete before the end of the district’s school year.

**Right to Disagree:** If at the end of this process the parents do not agree with the IEP that has been developed for the school year, they can dispute the decision. During the dispute, the district must follow the Preschool Early Intervention IEP.<sup>39</sup> Your child’s Preschool EI IEP is valid even if you do not get a transition meeting or evaluation from the district.<sup>40</sup> The district must provide the services in your child’s EI IEP until they find your child no longer eligible or develop a new IEP.<sup>41</sup>

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The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ students, and children experiencing homelessness.

ELC’s publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC’s Helpline for information and advice — visit [www.elc-pa.org/contact](http://www.elc-pa.org/contact) or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) — or contact another attorney of your choice.

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<sup>1</sup> 55 Pa. Code § 4226.3

<sup>2</sup> 55 Pa. Code § 4226.24(g)(2)

<sup>3</sup> 22 Pa. Code § 14.101

<sup>4</sup> 22 Pa. Code § 14.153(4)(ii)

<sup>5</sup> 22 Pa. Code § 14.101

<sup>6</sup> 22 Pa. Code § 14.153(4)(ii)

<sup>7</sup> See 55 Pa. Code § 4226.22(a); 34 C.F.R. § 300.8(b); 22 Pa. Code § 14.101

<sup>8</sup> Comments to 34 C.F.R. § 303.321(a)(3)(ii).

<sup>9</sup> Comments to 34 C.F.R. § 303.321(a)(3)(ii).

<sup>10</sup> EITA Professional Development Module, Using Informed Clinical Opinion to Determine Eligibility for Infant-Toddler Early Intervention in Pennsylvania, <http://www.eita-pa.org/professional-development>.

<sup>11</sup> 55 Pa. Code § 4226.24(g)(2)

<sup>12</sup> 34 C.F.R. § 300.323(c)(1)

<sup>13</sup> 22 Pa. Code § 14.154(d)(1)

<sup>14</sup> 55 Pa. Code § 4226.25; 55 Pa. Code § 4226.26

<sup>15</sup> 55 Pa. Code § 4226.5

<sup>16</sup> 34 C.F.R. § 303.126

<sup>17</sup> 34 C.F.R. § 303.26

<sup>18</sup> 71 Fed. Reg. 46,540 (2006); *Letter to Anonymous*, 50 IDELR 229 (OSEP 2008); *Dear Colleague Letter*, 69 IDELR 106 (OSEP 2017); 22 Pa. Code § 14.155(b)

<sup>19</sup> 34 C.F.R. § 300.114(a)(2); 22 Pa. Code § 14.155(b)

<sup>20</sup> 71 Fed. Reg. 46,540 (2006); *Letter to Anonymous*, 50 IDELR 229 (OSEP 2008); 22 Pa. Code § 14.155(b)

<sup>21</sup> 71 Fed. Reg. 46,588 (2006)

<sup>22</sup> 22 Pa. Code § 14.155(c)(1)

<sup>23</sup> 22 Pa. Code § 14.155(c)(2)

<sup>24</sup> 55 Pa. Code § 4226.97(a)

<sup>25</sup> See ODR IEP/IFSP Facilitation Fact Sheet, <https://odr-pa.org/facilitation/iep-ifsp-facilitation/>

<sup>26</sup> 34 C.F.R. § 300.506

<sup>27</sup> 34 C.F.R. § 300.511

<sup>28</sup> 55 Pa code § 4226.95(b)(4)

<sup>29</sup> 34 C.F.R. § 300.151

<sup>30</sup> 34 C.F.R. § 300.153(c)

<sup>31</sup> 34 C.F.R. § 300.152(a)

<sup>32</sup> 34 C.F.R. § 303.209(d); 55 Pa. Code § 4226.77(b)(5)

<sup>33</sup> 55 Pa Code § 4226.77(b)(2)

<sup>34</sup> *Pardini v. Allegheny Intermediate Unit*, 420 F.3d 181 (3d Cir. 2005)

<sup>35</sup> 22 Pa. Code § 14.154(e)

<sup>36</sup> Early Intervention Announcement EI-09 #19 (October 20, 2009)

<sup>37</sup> 34 C.F.R. § 300.303

<sup>38</sup> 34 C.F.R. § 300.323

<sup>39</sup> 34 C.F.R. § 300.518(a)

<sup>40</sup> 34 C.F.R. § 300.323(e); Early Intervention Announcement EI-09 #19 (October 20, 2009)

<sup>41</sup> 34 C.F.R. § 300.323(e); Early Intervention Announcement EI-09 #19 (October 20, 2009)