

Individuals with Disabilities Education Act (IDEA) *Part C Procedural Safeguards (Parent Rights)*

Introduction

The Individuals with Disabilities Education Act (IDEA) is a federal law that includes provisions for early intervention services for eligible infants and toddlers (ages 0-36 months) with developmental delays or disabilities and their families. These provisions are included under Part C of IDEA. These are described in federal regulations (34 CFR Part 303) and in the State of Washington's policies and procedures.

In Washington, the Part C system is called the Early Support for Infants and Toddlers (ESIT) program. The system is designed to maximize family involvement and ensure parental consent in each step of the early intervention process, beginning with initial referral and continuing through service delivery and transition.

The ESIT program includes procedural safeguards to protect parents and children as defined under federal regulations at 34 CFR 303.401-460, including administrative complaint procedures at 34 CFR 303.510-512. Parents must be informed about these procedural safeguards so that they can be actively involved and have a leadership role in the services provided to their child and family. This parent rights document is an official notice of the procedural safeguards of children and families as defined under federal Part C regulations.

Additional information about child and family procedural safeguards is available through each Family Resources Coordinator, early intervention services contractor and early intervention services provider that is involved in the provision of early intervention services.

Family Resources Coordinators (FRCs) working with families can suggest additional materials to help families understand their procedural safeguards under Part C. They can also suggest ways that you and other family members can be partners with professionals to help meet the developmental needs of your child.

Overview of Procedural Safeguards (Parent Rights)

Within the Washington Early Support for Infants and Toddlers Program, you, as a parent, have the following rights:

- The right to a multidisciplinary evaluation and assessment and the development of an Individualized Family Service Plan (IFSP) within forty-five (45) calendar days from referral to early intervention;

- The right to receive evaluation, assessment, IFSP development, service coordination, and procedural safeguards at no cost to families;
- If eligible under Part C, the right to receive appropriate early intervention services for your child and family as addressed in an IFSP. When authorized by the parent, private and/or public insurance may be billed for services."
- The right to refuse evaluations, assessments, and services;
- The right to be invited to and participate in all meetings in which a decision is expected to be made regarding a proposal to change the identification, evaluation, or placement of your child, or the provision of appropriate early intervention services to your child or family;
- The right to receive written timely notice before a change is proposed or refused in the identification, evaluation, or placement of your child, or in the provision of appropriate early intervention services to your child or family;
- The right to receive each early intervention service in natural environments to the extent appropriate to meet your child's developmental needs;
- The right to maintenance of the confidentiality

"Appropriate early intervention services" are determined through the IFSP process. The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in the IFSP. Federal Part C regulations <http://www.nectac.org/idea/303regs.asp> define early intervention services as services that "are designed to meet the developmental needs of each child eligible under Part C and the needs of the family related to enhancing the child's development."

Personally identifiable information includes:
1) the name of your child, your name, or the names of other family members; 2) the address of your child; 3) a personal identifier such as your child's or your social security number; 4) a list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

of personally identifiable information;

- The right to inspect and review and, if appropriate, amend your child's records;
- The right to request mediation and/or an impartial due process hearing to resolve parent/provider disagreements; and
- The right to file an administrative complaint.

In addition to the rights noted above, you are entitled to be notified of specific procedural safeguards under Part C. These rights are described below.

Written Prior Notice

Written prior notice must be given to you within a reasonable time before an early intervention services contractor or early intervention services provider proposes or refuses to initiate or change the identification, evaluation, or placement of your child, or the provision of appropriate early intervention services to your child and your family. The notice must be sufficiently detailed to inform you about:

- The action that is being proposed or refused by the early intervention services contractor or early intervention services provider;
- The reasons for taking the action;
- All procedural safeguards that are available under Part C; and
- The state's complaint procedures, including a description of how to file a complaint and the timelines for those procedures.

The notice must be written in language understandable to the general public and provided in your native language unless clearly not feasible to do so.

If your native language or other mode of communication is not a written language, the early intervention services contractor or early intervention services provider shall take steps to insure that:

- The notice is translated orally or by other means to you in your native language or other mode of communication;
- You understand the notice;
- There is written evidence that the requirements described in these procedures have been met; and
- If you are deaf, blind, unable to read, or have no written language, the mode of communication must be that normally used by you (such as sign language, Braille, or oral communication).

Parental Consent

Consent means that:

- You are fully informed of all information about the activity(s) for which consent is sought. This information is provided in your native language or other mode of communication;
- You understand and agree in writing to the carrying out of the activity(s) for which your consent is sought, and the consent describes the activity(s) and lists the records (if any) that will be released and to whom; and
- You understand that the granting of consent is voluntary on your part and may be revoked at any time.

Native Language, where used to refer to people with limited English language skills, means the language or mode of communication normally used by the parent of an eligible child.

Your written consent must be obtained before the initial evaluation and assessment of your child is conducted. Usually, if you do not give consent for initial evaluation, no action will be taken to coerce (force) you. However, if refusal to consent for evaluation or assessment constitutes neglect or abuse, Washington State Child Protective Service Law applies, as appropriate.

Your written consent must also be obtained before early intervention services are provided.

If you do not consent, the Family Resources Coordinator, the early intervention services contractor, early intervention services provider or appropriate qualified staff shall make reasonable efforts to ensure that you:

- Are fully aware of the nature of the evaluation and assessments or the services that would be available; and
- Understand that your child will not be able to receive the evaluation and assessments or the services unless consent is given.

As the parent of a child eligible under Part C, you may determine whether your child or other family members will accept or decline any early intervention service(s) under this program. You may also decline such a service (except the administration function required under the regulations for Family Resources Coordination) after first accepting it without jeopardizing other early intervention services under ESIT program.

Records

Examination of Records

In accordance with the Confidentiality of Information procedures outlined in this document, you must be given the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints concerning your child, and any other portion of the Part C program involving records about your child and your family.

The following definitions are used in this section: (1) "Destruction" means physical destruction or removal of personal identifiers from information to ensure that it is no longer personally identifiable; (2) "Education record(s)" or "record(s)" means the records covered by Family Education Rights and Privacy Act (FERPA); and (3) "Participating agency" means any agency or institution which collects, maintains, or uses personally - identifiable information, or from which information is obtained, under Part C.

Each early intervention services contractor or early intervention services provider must give you the opportunity to inspect and review (during business hours) any records relating to your child or family, which are collected, maintained or used by the contractor or provider under Part C. The early intervention services contractor or early intervention services provider must comply with a request without unnecessary delay and before any meeting regarding an IFSP or hearing relating to identification, evaluation, placement, or provision of services for your child and family and, in no case, more than forty-five (45) calendar days after the request has been made. The opportunity to inspect and review early intervention records includes:

- The right to a response from the early intervention services contractor or early intervention services provider to reasonable requests for explanations and interpretations of the record;
- The right to request that the early intervention services contractor or early intervention services provider provides copies of the records containing the information if failure to provide those copies would effectively prevent you from exercising the opportunity to inspect and review the records; and
- The right to have someone who is representing you inspect and review the record.

An early intervention services contractor or early intervention services provider may presume that you have the authority to inspect and review records related to your child unless the contractor or provider has been advised that you do not have the authority under applicable state law or court order governing such matters as guardianship, separation, and divorce.

Each early intervention services contractor or early intervention services provider shall keep a written record of parties obtaining access to records collected, obtained, or used under Part C (except access by parents and authorized employees of such contractor or provider), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the child's record.

If any early intervention record includes information on more than one child, you may inspect and review only the information relating to your child, or you, or to be informed of that specific information.

Each early intervention services contractor or early intervention services provider shall provide you,

upon request, a list of the types and locations of early intervention records collected, maintained, or used by the contractor or provider. An early intervention services contractor or early intervention services provider may charge a fee for copies of records which are made for parents under Part C if the fee does not effectively prevent you from exercising your opportunity to inspect and review those records. However, they may not charge a fee to search for or to retrieve information under Part C.

If you believe that information in early intervention records collected, maintained, or used under Part C is inaccurate or misleading, or violates the privacy or other rights of your child or family, you may request the early intervention services contractor or early intervention services provider which maintains the information to amend the information.

- Such contractor or provider must decide whether to amend the information in accordance with the request within a reasonable period of time after it receives the request.
- If such contractor or provider refuses to amend the information as you request, you must be informed of the refusal and be advised of the right to a hearing.

The early intervention services contractor or early intervention services provider, on request, must provide an opportunity for a hearing to challenge information in early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

- If, as a result of the hearing, such contractor or provider decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and must inform you in writing.
- If, as a result of the hearing, such contractor or provider decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, you must be informed of your right to place in the records of your child, a statement commenting on the information, and setting forth any reasons for disagreeing with the decision of the contractor or provider.

Any explanation placed in the records of your child under these procedures must:

- Be maintained by the early intervention services contractor or early intervention services provider as part of the records of your child as long as the record or contested portion (that part of the record with which you disagree) is maintained by such contractor or provider; and
- If the records of your child or the contested portion are disclosed by such contractor or provider to any party, the explanation must also be disclosed to the party.

A hearing held under this section must be conducted according to the procedures under the Family Education Rights & Privacy Act (FERPA) regulations at 34 CFR 99.22.

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Confidentiality of Information

Parental consent must be obtained before personally identifiable information is:

- Disclosed to anyone other than officials of the contractor or provider in collecting or using information under Part C, unless authorized to do so under FERPA (34 CFR 99.31); or
- Used for any purpose other than meeting a requirement under Part C.

Information from your child's early intervention record cannot be released by an early intervention services contractor or early intervention services provider to other agencies without your consent unless the contractor or provider is authorized to do so under FERPA.

The following safeguards must be in place to ensure confidentiality of records:

- Each early intervention services contractor or early intervention services provider must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages;
- One official of each early intervention services contractor or early intervention services provider is responsible for insuring the confidentiality of any personally identifiable information;
- All persons collecting or using personally identifiable information must receive training or instruction regarding Washington's Part C policies and procedures which comply with IDEA and FERPA;
- Each early intervention services contractor or early intervention services provider must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally identifiable information;
- The early intervention services contractor or early intervention services provider must inform parents when personally identifiable information collected, maintained, or used under Part C is no longer needed to provide services to the child or family.
- Once the information is no longer needed for service provision to the child or family, the information must be destroyed at the request of the parents, consistent with state and federal record retention requirements.

Permanent records of your child's and family's name, address, phone number, attendance and year completed may be maintained without time limitations.

Dispute Resolution Procedures

If you disagree with an early intervention services contractor or early intervention services provider on the identification, evaluation, placement of your child, or provision of appropriate early intervention services to your child or family, you may request a timely resolution of your concerns.

The following is an overview of three formal procedures available to you for dispute resolution. These include mediation, an impartial due process hearing and an administrative complaint.

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Mediation

Mediation provides an opportunity for you to resolve a disagreement in a non-adversarial way. It is voluntary and must be freely agreed to by both parties.

Mediation must be completed in a timely manner following receipt by the State Lead Agency of a request for mediation and may not be used to deny or delay your rights to an impartial due process hearing or to deny any of your other rights under Part C.

The mediation will be scheduled in a timely manner and held in a location that is convenient to both parties. A qualified and impartial mediator who is trained in effective mediation techniques will meet with both parties to help find a solution to the dispute in an informal, non-adversarial atmosphere.

The State Lead Agency maintains a list of qualified mediators who are knowledgeable of the laws and regulations relating to the provision of early intervention services for infants and toddlers with developmental delays or disabilities and their families. The State lead Agency is responsible for the cost of mediation.

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent impartial due process hearings or civil proceedings. The parties to the mediation will be required to sign a confidentiality pledge prior to the beginning of the process.

Both parties must sign the mediation agreement and both parties are given a copy of the written agreement at the end of the mediation process. If resolution is reached during mediation, the written agreement will be legally binding and enforceable in a state court of competent jurisdiction or in U.S. District court.

Mediation does not restrict you from requesting an impartial due process hearing at any time. You may simultaneously file a request for mediation and for an impartial due process hearing as described below.

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Impartial Due Process Hearings

An impartial due process hearing is a formal procedure conducted by an impartial hearing officer and is an option for families seeking to file an individual child complaint.

Families seeking an impartial due process hearing must submit their request in writing directly to the State Lead Agency explaining their complaint.

The impartial due process hearing must be completed, and a written decision made, within thirty (30) calendar days of the receipt of the request. (Mediation, if attempted, must occur within the same 30 days.) Hearing officers are appointed to conduct due process hearings.

Hearing officers must have knowledge about the provisions of Part C and the needs of and services available for eligible children and their families and perform the following duties:

- Listen to the presentation of relevant views about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint.
- Provide a record of the proceedings at the cost of the state, including a written decision.

About Hearing Officers...

Due process hearing officers must be "impartial." Impartial means that the person appointed to serve as a hearing officer:

- (1) Is not an employee of the State Lead Agency, early intervention services contractor or early intervention services provider involved in providing early intervention services or care of the child; and
- (2) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

A person who otherwise qualifies as a hearing officer is not an employee of the State Lead Agency, early intervention services contractor or early intervention services provider solely because the person is paid by the agency or program to implement the due process hearing provisions.

Under Part C, you are given the rights listed below in any impartial due process hearing carried out under these procedures.

- To be accompanied and advised by counsel (at your expense) and by individuals with special knowledge or training about early intervention services for children eligible under Part C;
- To present evidence and confront, cross examine, and to compel the attendance of witnesses;
- To prohibit the introduction of any evidence at the proceedings that has not been disclosed to you at least five calendar days before the proceeding;
- To obtain a written or electronic verbatim (word by word) transcription of the proceeding; and
- To obtain written findings of fact and decisions.

The impartial due process hearing described in these procedures must be carried out at a time and place that is reasonably convenient to you. No later than thirty (30) calendar days after the State Lead Agency receives your complaint, the impartial due process proceeding must be completed and a written decision must be mailed to each of the parties. Any party not satisfied with the findings and decision of the impartial due process hearing has the right to bring a civil action in state or federal court.

During the pendency (time period) of any proceeding involving a complaint, unless the early intervention services contractor or early intervention services provider and you otherwise agree, your child and family will continue to receive the appropriate early intervention services currently being provided.

If the complaint involves an application for initial services, your child and family must be provided those services that are not in dispute.

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Administrative Complaints

In addition to the mediation and due process hearing procedures listed above, an individual or organization including those from another state may file a written signed complaint against any public agency or private service provider, including any early intervention services contractor or early intervention services provider that is violating a requirement of the Part C program.

The complaint must include a statement that a requirement of Part C has been violated and a statement of the facts on which the complaint is based.

Administrative complaints must be filed and received by the State Lead Agency within one (1) year of the alleged violation. Under certain circumstances, the period for filing the complaint may be longer:

- If the violation is still occurring for that child or other children; or
- If the person filing the complaint is requesting reimbursement or corrective action for a violation that occurred not more than three years prior to the date the complaint is received by the State Lead Agency.

Once the State Lead Agency has received the complaint, it has sixty (60) calendar days (unless exceptional circumstances exist) to:

- Investigate the complaint, including conducting an independent, on-site investigation, if necessary;
- Make an independent determination as to whether or not a violation of a Part C requirement has occurred after reviewing all relevant information; and
- Issue a written decision to the complainant that addresses each allegation in the complaint and that contains the facts and conclusions as well as the reasons for the final decision.

The individual or organization filing the complaint has the opportunity to submit additional information, either orally or in writing, about the complaint. If the final decision indicates that appropriate services were not/are not being provided, the State Lead Agency must address:

- How to remediate the denial of those services including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and
- Appropriate future provision of services for all infants and toddlers with developmental delays or disabilities and their families.

The Lead Agency must include procedures for effective implementation of the decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, the State Lead Agency must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However,

any issue in the complaint that is not a part of the due process action must be resolved within the 60 calendar day timeline using the complaint procedure described in this document.

Complaints that have already been decided in an impartial due process hearing involving the same parties cannot be considered under this procedure. The State must notify the complainant that the hearing decision is binding.

A complaint alleging a public agency's or private service provider's (including an early intervention services contractor or early intervention services provider) failure to implement a due process decision must be resolved by the State Lead Agency.

Surrogate Parents

The rights of children eligible under Part C are protected if:

- No parent can be identified;
- The early intervention services contractor or early intervention services provider, after reasonable efforts, cannot determine the whereabouts of a parent, or
- The child is a ward of the State of Washington under the laws of the State.

An individual is assigned to act as a "surrogate"

for the parent according to the procedures that follow.

The procedures include a method for determining whether a child needs a surrogate parent and assigning a surrogate to the child.

The following criteria are employed when selecting surrogates. Surrogate parents are selected by each early intervention services contractor or early intervention services provider and must meet the following requirements:

- Has no interest that conflicts with the interest of the child he or she represents;
- Has knowledge and skills that ensure adequate representation of the child; and
- Is not an employee of any state agency; or an employee of any person providing early intervention services to the child or to any family member of the child. A person who otherwise qualifies to be a surrogate parent under these procedures is not an employee solely because he or she is paid by an early intervention services contractor or early intervention services provider to serve as a surrogate parent.

A surrogate parent may represent the child in all matters relating to the following:

- The evaluation and assessment of the child;
- Development and implementation of the child's Individualized Family Services Plan (IFSP), including annual and periodic IFSP reviews;
- The ongoing provision of early intervention services to the child; and
- Any other rights established under Part C.

Contact Info

If you need more information about your procedural safeguards, contact your local Family Resources Coordinator at:

Or

If you are planning to file a complaint, request mediation and/or a due process hearing, please contact the Early Support for Infants and Toddlers (ESIT) program at:

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Early Support for Infants and Toddlers

Department of Early Learning
PO. Box 40970
Olympia, Washington 98504-0970
VOICE (360) 725-3500
TTY (360) 407-1087
FAX (360) 725-3523
www.del.wa.gov/esit

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Parent Advocacy Resource:

Washington PAVE (Partnerships for Action, Voices for Empowerment)
6316 So. 12th Street
Tacoma, Washington 98465
Phone, 1-(800) 5 PARENT
FAX: 1-(253) 566-8052