

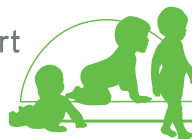


Individuals with Disabilities
Education Act (IDEA)
Part C Procedural Safeguards

Parent Rights



Early Support
for Infants
and Toddlers



JULY 2012

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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 Birth - 36 months) with 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

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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 the rights of parents and children. Parents must be informed about these procedural safeguards as defined under federal regulations at 34 CFR 303.400-438,

including dispute resolution options at 34 CFR 303.430-438, 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.

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.

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

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 followed by the development of an Individualized Family Service Plan (IFSP) at the initial IFSP meeting, within 45 calendar days from referral.
- The right to receive evaluation, assessment, IFSP development, service coordination, and procedural safeguards at no cost to families.
- The right to receive an evaluation, if you request and provide consent for it, at any time during the screening process (if used).
- If eligible under Part C, the right to receive **appropriate early intervention services** for your child and family as addressed in an IFSP.
- The right to refuse screening, 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

“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.gpo.gov/fdsys/pkg/FR-2011-09-28/pdf/2011-22783.pdf> 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 or family; 3) a personal identifier such as your child’s or your social security number; 4) other indirect identifiers, such as your child’s date of birth, place of birth, and mother’s maiden name; 5) a list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty; or 6) information requested by a person who the early intervention program reasonably believes knows the identity of your child.

early intervention services to your child or family.

- The right to receive timely written 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 of **personally identifiable information**.
 - The right to obtain an initial copy of your child’s early intervention record at no cost.
 - The right to a copy of each evaluation, assessment, and IFSP which must be provided to you as soon as possible after each IFSP meeting.

- 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.
- 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.

Prior Written Notice

Prior written notice must be given to you within a reasonable time before an early intervention service 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 service provider.
- The reasons for taking the action.
- All procedural safeguards that are available under Part C.
- The state's mediation, state complaint, and due process hearing 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 service provider shall take steps to ensure 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; and
- There is written evidence that the requirements described in these procedures have been met.

Parental Consent

Consent means:

- You have been fully informed of all information relevant to the activity for which consent is sought, in your native language;
- You understand and agree in writing to the carrying out of the activity for which your consent is sought, and the consent describes the activity and lists the early intervention records (if any) that will be released and to whom;
- You understand that the granting of consent is voluntary on your part and may be revoked at any time.

If you revoke your consent, it is not retroactive (it does not apply to an action that occurred before consent was revoked).



Your written consent must be obtained before:

- Administering a developmental screening to determine whether your child is suspected of having a disability.
- Conducting all evaluations and assessment of your child.
- Providing early intervention services to your child.
- Using public benefits or insurance or private insurance to pay for services.

- Sharing personally identifiable information about you and your child.

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

If you do not provide consent, no action will be taken to coerce (force) you. In other words, the Family Resources Coordinator (FRC), or early intervention service provider may not use the due process hearing procedures to challenge your refusal to provide consent.

The Family Resources Coordinator (FRC), the early intervention service provider or appropriate qualified staff shall make reasonable efforts to ensure that you:

- Are fully aware of the nature of the screening, evaluation and assessments or the services that would be available.
- Understand that your child will not be able to receive the screening, 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 administrative functions required under the regulations for Family Resources Coordination) after first accepting it without jeopardizing other early intervention services under the ESIT program.

Native Language, where used to refer to people with limited English language skills, means the language normally used by you. When conducting evaluations and assessments of your child, native language means the language normally used by your child. When used with respect to a person who is deaf or hard of hearing, blind or visually impaired, or for a person with no written language, native language means the mode of communication that is normally used by that person (such as sign language, Braille, or oral communication).

Records

Confidentiality

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

Each early intervention service provider must give you the opportunity to inspect and review (during business hours) any records relating to your child or family that are collected, maintained or used by the contractor or provider under Part C from the point in time when your child is referred for early intervention services until the later of when the participating agency is no longer required to maintain or no longer maintains the information under applicable Federal and State laws. The early intervention service 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 10 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 service provider to reasonable requests for explanations and interpretations of the record.
- The right to request that the early intervention service provider provides records containing the information, if failure to provide those copies would effectively prevent you from exercising the opportunity to inspect and review the records.

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) **“Early intervention records”, “Education record(s)” or “record(s)”** means all records regarding a child that are required to be collected, maintained or used under Part C; and (3) **“Participating agency”** means any individual, agency, entity or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C. A participating agency includes the state lead agency, each early intervention service provider that provides Part C services (including service coordination, evaluations and assessments and other Part C services). It does not include primary referral sources or public or private agencies that fund early intervention services.

- The right to have someone who is representing you inspect and review the record.

An early intervention service provider may presume that you have the authority to inspect and review records related to your child unless the contractor or provider has been provided documentation that you do not have the authority under applicable state law governing such matters as custody, foster care, guardianship, separation, and divorce.

Each early intervention service 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 service 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 service provider may charge a fee for copies of records that are made for you 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. In addition, you must also be provided at no cost a copy of each evaluation, assessment of the child, family assessment, and the IFSP as soon as possible after each IFSP meeting.

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 you or your child, you may request the early intervention service provider that 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 service provider must, on request, 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 you and your child. You may request a due process hearing under Part C procedures or hearing procedures that are consistent with the Family



Educational Rights and Privacy Act (FERPA) regulations at 34 CFR 99.22.

- 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 you and your 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 you and your 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 service 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.
- If the records of your child or the contested portion are disclosed by such contractor or provider to any party, your explanation must also be disclosed to the party.

Consent Prior to Disclosure

Parental consent must be obtained before personally identifiable information is:

- Disclosed to anyone other than officials of the contractor or provider in collecting, maintaining, or using information under Part C, unless authorized to do so under Part C (34 CFR 303.414) and 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 service provider to other agencies without your consent unless the contractor or provider is authorized to do so under FERPA. If you refuse to provide consent, the early intervention service provider implements procedures related to refusal, such as explaining to you how not providing consent affects the ability of your child to receive early intervention services, as long the procedures do not override your right to refuse consent.

Under Part C, ESIT is required to release your child's name and date of birth, and your contact information (including your names, addresses, and telephone numbers) without your consent to the state education agency (Office of Superintendent of Public Instruction) and the local education agency (local school district) where your child resides. This information is needed to identify all children potentially eligible for services under Part B of IDEA.

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

- Each early intervention service provider must protect the confidentiality of personally identifiable information at collection, maintenance, storage, disclosure, and destruction stages.

Each early intervention services contractor or early intervention services provider must protect the confidentiality of personally identifiable information . . .

- One official of each early intervention service provider is responsible for ensuring 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 service 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 service provider must inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide services to your child or family under Part C, the GEPA provisions in 20 USC 1232f, and EDGAR, 34 CFR parts 76 and 80.
- 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.

Permanent records of your child's name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) (FRCs), and early intervention provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitations.

Dispute Resolution Procedures

If you have a concern about your child's early intervention program, please share it with the FRC or IFSP team as soon as possible. The ESIT program encourages resolution of disagreements at the lowest level possible. However, if a concern cannot be resolved informally, dispute resolution options are available.

If you disagree with an early intervention service 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 are the three formal procedures available to you for dispute resolution. These include mediation, an impartial due process hearing and an administrative complaint.

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.

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The state lead agency may establish procedures to offer parents and early intervention service providers that choose not to use the mediation process an opportunity to meet, at a time and location convenient to you, with a disinterested party (impartial Mediator), who is under contract with a dispute resolution entity, or a parent training and information center or community parent resource center in the State, to explain the benefits of, and encourage the use of, the mediation process.

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 impartial Mediators who are knowledgeable of the laws and regulations relating to the provision of early intervention services for infants and toddlers with disabilities and their families. Mediators must be selected on a random, rotational, or other impartial basis. The state lead agency is responsible for the cost of mediation including the costs of any meetings to encourage mediation.

If the disagreement is resolved through mediation, the parties must complete a legally binding agreement that describes the resolution and that states that all discussions that occurred during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The agreement must be signed by you and a representative of the state lead agency who has the authority to bind the agency. The written, signed mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.

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.

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 complaint on behalf of their child.

The impartial due process hearing must be completed, and a written decision made, within 30 calendar days of the receipt of the request. (Mediation, if attempted, must occur within the same

30 calendar 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 information 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.

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 (at your expense).
- To present evidence and confront, cross-examine, and compel the attendance of witnesses.
- To prohibit the introduction of any evidence at the hearing 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 hearing at no cost to you.
- To obtain written findings of fact and decisions at no cost to you.

The impartial due process hearing described in these procedures must be carried out at a time and place

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.

that is reasonably convenient to you. No later than 30 calendar days after the state lead agency receives your complaint, the impartial due process hearing must be completed and a written decision must be mailed to each of the parties. The Hearing Officer may grant specific extensions of time beyond the 30 days at the request of either party. 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 due process complaint, unless the early intervention service provider and you otherwise agree, your child and family will continue to receive the appropriate early intervention

About Mediators and Hearing Officers . . .

Mediators and due process Hearing Officers must be "impartial." Impartial means that the person appointed to serve as a Mediator or Hearing Officer:

- (1) Is not an employee of the state lead agency, early intervention service provider involved in providing early intervention services, other 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 Mediator or Hearing Officer is not an employee of the state lead agency, early intervention service provider solely because the person is paid by the agency or program to implement the mediation or due process hearing provisions.

An **administrative 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.

services in the setting identified in the IFSP to which you have consented.

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

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 service provider that is violating a requirement of the Part C program. The state lead agency widely disseminates the state's complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, and other appropriate entities.

The complaint must include:

- A statement that the lead agency, public agency, or early intervention service provider has allegedly violated a requirement of Part C.
- The facts on which the statement is based.
- The signature and contact information for the person filing the complaint.
- If alleging violations with respect to a specific child:
 - The child's name and address where the child resides.
 - The name of the child's early intervention services contract or early intervention service provider.

- A description of the nature of the child's problem including facts relating to the problem.
- A proposed resolution of the problem to the extent known and available at the time the complaint is filed

Administrative complaints must be filed and received by the state lead agency within one (1) year of the alleged violation. The individual or agency filing the complaint must forward a copy of the complaint to the early intervention service provider serving the child at the same time the complaint is filed with the state lead agency.

Once the state lead agency has received the complaint, it has 60 calendar days to:

- Carry out an independent, on-site investigation, if the state lead agency determines that an investigation is necessary.
- Give the individual or organization filing the complaint an opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
- Provide the agencies/providers with an opportunity to respond to the complaint, including at the discretion of the lead agency, a proposal to resolve the complaint and an opportunity for the all parties to engage in mediation.
- Review all relevant information and make an independent determination as to whether or not a violation of a Part C requirement has occurred.
- Issue a written decision to the person filing the complaint that addresses each allegation in the complaint and contains the findings of facts and conclusions as well as the reasons for the lead agency's final decision.

If the final decision indicates that appropriate services were not/are not being provided, the state lead agency must address:

- The failure to provide appropriate services,

including corrective actions appropriate to address the needs of your child who is the subject of the complaint and your family (such as compensatory services or monetary reimbursement); and

- Appropriate future provision of services for all infants and toddlers with disabilities and their families.

The state 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 and complaint procedures 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 lead agency 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 service 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 service provider, after reasonable efforts, cannot locate 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.

These procedures include a method for determining whether a child needs a surrogate parent and making a reasonable effort to assign a surrogate to the child not more than 30 calendar days after determining the child needs a surrogate parent.

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

- Has no personal or professional interest that conflicts with the interest of the child he or she represents.
- Has knowledge and skills that ensure adequate representation of the child.
- Is not an employee of any state agency; or an employee of any person providing early intervention services, education, care, or other 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 service provider to serve as a surrogate parent.

When a child is a ward of the State of Washington or placed in foster care, the early intervention service provider agency must consult with the public agency that has been assigned care of the child.

For a child who is a ward of the state, instead of being appointed by the early intervention service provider agency, a judge overseeing the child's case may appoint the surrogate parent as long as the selection meets the selection criteria above.

The surrogate parent has the same rights as a parent for all purposes under Part C.

Contact Information

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

Early Support for Infants and Toddlers
Department of Early Learning
PO Box 40970
Olympia, Washington 98504-0970
Phone: (360) 725-3500
FAX: (360) 725-4925
www.del.wa.gov/esit

Parent Advocacy Resource:

Washington PAVE (Partnerships for Action,
Voices for Empowerment)
6316 S. 12th St.
Tacoma, Washington 98465
Phone: 1-(800)-5-PARENT
FAX: 1-(253)-566-8052
www.wapave.org

