

**Part C Procedural Safeguards**

*PART C PROCEDURAL SAFEGUARDS*

**I. GENERAL RESPONSIBILITY**

The Delaware Department of Health and Social Services (DHSS) has established procedural safeguards that meet the requirements of the Individuals with Disabilities Education Act, Part C and ensures the effective implementation of those safeguards by each public agency involved in the provision of early intervention services. All agencies receiving either Part C federal funds or state funds, authorized by the Interagency Resource Management Committee, for early intervention services are required to abide by these safeguard policies and procedures. Any provider not abiding by these policies and procedures will lose program funding.

**II. DEFINITIONS**

A. Consent means that:

1. the parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language or other mode of communication;
2. the parent understand and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any), including physical documents and recorded information, that will be released and to whom; and
3. the parent understands that the granting of consent is voluntary and may be revoked at any time.

B. Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

C. Education records means the records covered by the Federal Regulations Implementing the Family Educational Rights and Privacy Act. (FERPA).

D. Native language, when used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of an eligible child.

E. Participating Agency means any agency/institution, which collects, maintains, or uses personally identifiable information is obtained.

F. Personally identifiable means that information includes:

- a. the name of the child, the infant or toddler’s parent or other family member;
- b. the address of the child, the parent or other family member;
- c. a personal identifier, such as the social security number of the child, parent and other family member;
- d. a description of personal characteristics or other information that would make it possible to identify the child, the parent or other family member with reasonable certainty; and

**Part C Procedural Safeguards**

- G. Parent means a natural parent, an adoptive parent, a legal guardian, a person acting as a parent, or a surrogate parent appointed in accordance with Part C regulations. This definition was intended to include persons acting in the place of a parent, such as grandparent or stepparent with whom a child lives, as well as persons who are legally responsible for the child's welfare. The term does not include the State if the child is a ward of the State.
- H. A record is any information recorded in any way, maintained by an agency or service provider, or by any party acting for an agency or service provider. These records include files, evaluations, reports, studies, letters, telegrams, minutes of meetings, memoranda reflecting oral conversations, handwritten or other notes, charts, graphs, data sheets, films, videotapes, slides, sound recordings, discs, tapes, and information stored on microfilm or microfiche or in computer-readable form.
- I. Mediation is an informal process in which an impartial person helps parties in conflict resolve their differences and find solution satisfactory to all sides.

**III. NOTICE TO PARENTS**

- A. Agencies must give adequate notice to fully inform parents about their safeguards under IDEA, including:
1. a description of the extent the notice is given in the native language of population groups in the state;
  2. a description of the children on whom personally identifiable information is maintained, types of information sought, methods used to collect information (including sources to be used) and uses of information;
  3. summary of policies and procedures participating agencies must follow regarding storage, disclosure to 3<sup>rd</sup> parties, retention and destruction of personally identifiable information; and
  4. a description of all rights of parents and children regarding this information including FERPA and IDEA rights.
- B. NOTICE PRIOR TO ANY ACTION
1. Before any major Child Find activity, notice will be published in the newspaper or other media with circulation adequate to notify the Parents throughout the state.
  2. Written prior notice must be provided to the parents before:
    - a. any proposal to initiate or change the identification of a child, or
    - b. a refusal to initiate or change the identification of a child.
    - c. This notice may consist of a "consent to an evaluation" form.
  3. Written prior notice must be received by the parents of an eligible child ten- (10) working days before a public agency or a service provider:
    - a. proposes to change the evaluation or the placement of their child, or to initiate or change the provision of appropriate early intervention services to the child and the child's family or
    - b. refuses to initiate or change the evaluation or placement of their child, or the provision of appropriate early intervention services to the child and his or her family.
  4. Agencies and providers shall maintain a copy of the notice and documentation of notification.

**Part C Procedural Safeguards**

**C. CONSENT OF NOTICE**

1. The content of 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 proposing or refusing the action;
  - c. the information upon which the proposal or refusal is founded;
  - d. the parent’s right to refuse to consent to the action, including any consequences for parent or child if the parent refuses to consent;
  - e. the parent’s right to appeal the proposal or refusal to act, including a description of the method of making such an appeal, whether activities to which the parents object will be delayed pending the appeal, and whether activities sought by the parent will be implemented pending the appeal; and
  - f. all procedural safeguards available under the Part C statute and regulations.
2. The notice shall be:
  - a. written in language understandable to the general public; and
  - b. provided in the parent’s native language, unless it is clearly not feasible to do so.

COMMENT: Efforts to accomplish this requirement shall include, but shall not be limited to, a comprehensive translator search which may range beyond the geographic area served by the agency or provider and inquiries to the lead agency which shall maintain a resource list of translators.
  - c. If the native language or other mode of communication of the parent is not a written language, the public agency or designated service provider shall take steps to ensure that:
    - (1) the notice is translated orally, or by other means, to the parent in the parent’s native language or other mode of communication;
    - (2) the parent understands the notice; and
    - (3) there is written evidence that the requirements of this paragraph have been met.
  - d. If the parent is deaf or blind, or has no written language, the mode of communication shall be that normally used by the parent (e.g., sign language, Braille, or oral communication).

**D. NOTICE TO NATURAL PARENT:** When the natural parent is known, that parent should also receive notices of actions taken by the “acting parent”.

- E. NOTICE OF PARENT RIGHTS:** Parents shall be informed that they have the following rights:
1. the right to a comprehensive, multidisciplinary evaluation, including assessment, within forty-five (45) calendar days of the receipt of referral by the Part C Birth to Three Early Intervention System;
  2. the right to appropriate early intervention services for their child and family;
  3. the right to refuse evaluations and assessments, and services;
  4. the right to ten (10) working days advance notice before a change is made or refused in the identification, evaluation, or placement of their child, or in the provision of services to the family;
  5. the right to confidentiality of personally identifiable information;
  6. the right to review and seek correction of records;
  7. the right to be invited to and to attend and participate in meetings in which a decision is expected to be made regarding a proposal to change the identification,

**Part C Procedural Safeguards**

- evaluation, or placement of the child or the provision of services to the child or family;
- 8. the right to utilize an advocate or lawyer in any dealings with the Part C Early Intervention System; and
- 9. the right to utilize administrative and judicial processes to resolve complaints.

**F. HOW PARENTS SHALL BE INFORMED OF THEIR RIGHTS**

- 1. Written notice of parents' rights shall be provided when:
  - a. the family has initial contact with the early intervention system;
  - b. the initial evaluation and assessment is proposed or refused;
  - c. the eligibility determination is made;
  - d. the IFSP is being developed or reviewed; and
  - e. a change in services or placement is proposed or refused.
- 2. The notice shall be in the language of and by means understandable to the parents.  
COMMENT: In addition, the parent should be informed Verbally of any of the actions listed above.

**G. INFORMING PARENTS OF RIGHTS PERTAINING TO PART B: Parents should be informed of their rights relating to the Part B system in enough time to permit the parents to ensure that the child, if eligible, will receive appropriate Part B services in a timely fashion.**

**IV. PARENT CONSENT**

**A. WHEN INFORMED CONSENT MUST BE OBTAINED**

- 1. before conducting initial and subsequent evaluations and assessments, including family assessments;
- 2. at the time the IFSP is developed or reviewed, Parents shall be required to sign the IFSP as evidence of that consent.
- 3. before initiating early intervention services at any time prior to the development of the IFSP; and
- 4. before a significant change in identification, placement, evaluation or assessment, or in the amount or type of services.

**B. INFORMED PARENTAL CONSENT TO AN EVALUATION OR ASSESSMENT**

- 1. the parent understands the purpose of the evaluation or assessment and the procedures to be employed;
- 2. the parent understands any burdens a parent or family may bear as a result of the assessment or evaluation; and
- 3. the parent understands the possible adverse consequences of refusing to consent to an assessment or evaluation procedures.

**C. INFORMED PARENTAL CONSENT TO THE PROVISION OF SERVICES**

- 1. the parent understands the purpose of each service to be provided and how the service will be provided;
- 2. the parent understands the cost (if any) that parents or family may incur for the services;
- 3. the parent understands any burdens that parents or family may bear as a result of each proposed services; and
- 4. the parent understands the possible adverse consequences of refusing proposed services.

**Part C Procedural Safeguards**

**D. PARENTS RIGHT TO DECLINE SERVICE**

1. The parents may determine whether they, their child, or other family members will accept or decline any Part C early intervention service in accordance with State law without jeopardizing other early intervention service under Part C.
2. Providers may not refuse to perform an evaluation or assessment procedure or deny a service because parents have refused to consent to another procedure or service.  
COMMENT: an evaluation, assessment, or service could only be withheld if the procedure or service would have no validity or be ineffective without the refused procedure or service. This situation, however, would be rare.

**E. ENCOURAGING PARENT CONSENT IF CONSENT IS NOT GIVEN:**

1. Reasonable efforts shall be made to ensure that the parent:
  - a. is fully aware of the nature of the evaluation and assessment or the services that would be available; and
  - b. understands that the child will not be able to receive services unless consent is given.
  - c. activities may be pursued that are designed to encourage parents to consent to recommended assessment or evaluation procedures and recommended services that they have refused, including:
    - (1) providing parents with relevant literature or other materials;
    - (2) offering parents peer counseling;
    - (3) periodically renewing contact with parents, on an establishing time schedule, to determine if they have changed their minds about the desirability of recommended procedures or services.COMMENT: Any efforts to encourage parent consent shall be sensitive to the family and respect parent decisions.

**F. OVERRIDE POLICY FOR INITIAL EVALUATIONS**

1. The agency may only override parents' refusal to consent to an initial evaluation if that refusal constitutes medical abuse or neglect, where such abuse and neglect are required to be reported under state law.
2. A parents' refusal to consent to an evaluation is not by itself cause to suspect abuse or neglect.

**V. SURROGATE PARENTS**

**A. WHEN SHOULD A SURROGATE BE APPOINTED**

1. The state is mandated to appoint a surrogate parent when:
  - a. Custody has been awarded to the Department of Services for Children, Youth and their Families or other State agency by the Family Court; or
  - b. if no parent can be identified;  
COMMENT: It is unlikely that many infants or toddlers will be without someone who fits the definition of parent.
  - c. if the whereabouts of a parent cannot be discovered after reasonable efforts; or reasonable efforts include, but are not limited to, telephone calls, letters, certified letter with return receipt requested, or visits to the parents' last known address.
  - d. the rights of the natural parents have been terminated by

**Part C Procedural Safeguards**

- Family Court, no guardian has been appointed, and the infant/toddler has not been adopted (wards of the state);
2. A surrogate parent may be appointed by voluntary written consent to the appointment by the parent which is revocable at any time by the parent with written notice to the Department of Health and Social Services.
- B. CRITERIA FOR SELECTION OF SURROGATES:**
1. The lead agency ensures that the surrogate parent is selected as permitted by state law (Delaware Code Title 14 §3132).
    - a. has no interest that conflicts with the interests of the child he/she represents;
    - b. has knowledge and skills that ensure adequate representation of the child;
    - c. is not an employee of any agency involved in the provision of early intervention or other services to the child;
      - (1) A person, who otherwise qualifies as a surrogate parent, shall not be considered an employee of a public agency solely because he/she is paid by a public agency to serve as a surrogate parent.
      - (2) Foster parents are not considered employees for the purposes of this requirement.
      - (3) A foster parent may serve as a surrogate parent so long as the foster parent is planning on being the child’s foster parent for the foreseeable future or to adopt the child.
        - (a) has familial, social, and/or cultural ties to child, whenever possible.
  2. Method for determining whether a child needs a surrogate parent.
    - a. anyone can notify the Educational Surrogate Parent (ESP) Coordinator that a child may be eligible. Most often it will be either an employee of the Department of Services for Children, Youth, and Their Families or Child Development Watch that become aware of the need.
    - b. a referral form is completed. The original is sent to the ESP Coordinator and a copy is sent to the Division of Management Services. A determination is then made regarding the child’s eligibility based on the above criteria (V.A.1).
    - c. the ESP Coordinator selects a potential ESP for the child from the list of certified people. After the recommendation is reviewed and approved by the Department of Health and Social Services the surrogate parent is appointed to represent the child.
- C. RIGHTS AND RESPONSIBILITIES OF A SURROGATE:** surrogate parent has all the rights of a natural or adoptive parent as they pertain to Part C and shall represent a child in all matters relating to:
1. evaluation and assessment of the child;
  2. the development, implementation, annual evaluation, and review of the IFSP;
  3. the ongoing provision of early intervention services; and
  4. any other rights under Part C.
  5. A surrogate parent shall maintain standards of practice as outlined in the Educational Surrogate Parents Manual.
- D. TERMINATION**
1. A surrogate may be replaced only when:
    - a. he/she wishes to relinquish surrogate responsibilities; or

**Part C Procedural Safeguards**

- b. the Department determines that the appointment will be terminated based on the material failure of the surrogate to discharge his/her duties or maintain confidentiality.
2. If the surrogate is terminated, the surrogate has a right to appeal through the established appeal process described under Section VIII of this document.

**E. TRAINING/ASSISTANCE:**

1. The Educational Surrogate Parent Program and the Department of Health and Social Services shall provide initial training for surrogate parents.
2. All surrogate parents are required to take the initial training provided for surrogate parents.
3. Surrogate parents shall be provided follow-up training and assistance in performing their duties when necessary or upon request.

**F. COMPENSATION**

1. Surrogate parents shall be reimbursed by the Department of Health and Social Services for all reasonable and necessary expenses incurred in pursuit of their duties.
2. Reasonable and necessary expenses include, but are not limited to mileage for attendance at meetings concerning the child, long-distance telephone calls concerning the child's services, photocopying of the child's records.

**VI. CONFIDENTIALITY OF INFORMATION**

- A. All confidentiality policies and procedures meet Part B confidentiality requirements of information with some modifications to the definitions.
- B. All personally identifiable information concerning a child, the child's parent, or another family member is confidential.
  1. Parental consent must be obtained before personally identifiable information is
    - a. disclosed to anyone other than officials of participating agencies collecting or using the information under Part C of the federal Individuals with Disabilities Education Act, subject to paragraph 2 of this section; or
    - b. used for any purpose other than meeting a requirement under Part C.
  2. an agency or institution subject to Part C regulations may not release information from early intervention records to participating agencies without parental consent unless authorized to do so under FERPA.
- C. **CONSENT TO DISCLOSURE**
  1. Informed consent must be obtained before any disclosure of confidential information, except in the following circumstances:
    - a. public agency or service provider may disclose confidential information to its employees who have a legitimate need for access to the information;
    - b. confidential information may be shared among employees within a division of state government on a need to know basis, but only between divisions in compliance with individual Departmental guidelines on interagency sharing of information; or
    - c. disclosure of confidential information may be made:
      - (1) to authorized representatives of the Controller General of the United States, the U.S. Secretary of Education, or a state agency responsible for the administration of the Part C program when the disclosure is in connection with an audit or evaluation of the Part C program or for

**Part C Procedural Safeguards**

ensuring the program’s compliance with legal mandates, and the representatives to whom the disclosure is made protect against further disclosures and destroy the information when no longer needed;

- (2) to organizations conducting studies to develop, validate, or administer predictive tests, to administer financial aid programs, or to improve Part C services; and
    - (a) the study is conducted in a manner that does not permit personal identification of parents, children, or family members; and
    - (b) the information is destroyed when no longer needed for the purposes of the study;
  - (3) to accrediting organizations to carry out their functions;
  - (4) to comply with a judicial order of lawfully issued subpoena and a reasonable effort has been made by the disclosure to notify the parents in advance of compliance;
  - (5) To the eligible child’s parent.
- d. Each time a disclosure is made in circumstances #2-5 above:
- (1) the parent must be informed of that disclosure as soon as is possible; and
  - (2) the disclosure must be recorded in the child’s record and include the name of the party to whom the information was disclosed, the date of disclosure, and the purpose of disclosure.

**D. SEEKING CONFIDENTIAL INFORMATION**

- 1. A public agency or service provider must have informed parental consent to seek confidential information unless:
  - a. it is legally required to do so; or
  - b. the information is necessary to respond to a health or safety emergency.
- 2. Parents may be asked to sign a general release that would allow agencies or providers to seek or provide confidential information from others as long as:
  - a. parents are informed of their right to refuse to provide such authority and notification of that right appears on the written release form.
  - b. The release form lists those from whom the information may be sought and specifies what types of information may be sought from each;
  - c. Parents are given the opportunity to limit the information that might be released and the parties from whom information may be released;
  - d. the release is revocable at any time, parents understand that, and it is so stated on the release form; and
  - e. the release is limited to one year or until the development or review of the IFSP, whichever comes first.
- 3. Each disclosure of confidential information pursuant to a general release shall be recorded in a child’s record.

**E. RELEASE OF SENSITIVE INFORMATION**

- 1. Parents must give specific release for any disclosure of sensitive information. Sensitive information includes, but is not limited to, information pertaining to sexual or physical abuse, mental health treatment, HIV status, or a child’s parentage.
- 2. There should be a space provided on the release form where parents can indicate information that they do not want released without their written consent.

**Part C Procedural Safeguards**

- F. RELEASE OF INFORMATION TO THOSE WHO WILL SERVE THE CHILD UPON TRANSITION FROM THE PART C SYSTEM: Parents must give informed written consent for the release of information to the public school system or any other agency or provider that may serve their child upon transition from the Part C System.
- G. SECONDARY DISCLOSURE OF CONFIDENTIAL INFORMATION
  - 1. An agency, may, without parental consent, make a secondary disclosure of confidential information obtained from another party only if such a disclosure is both:
    - a. permitted under the terms of the original disclosure made to the agency or provider; and
    - b. either:
      - (1) permitted by policy F.2., above; or
      - (2) consistent with a general release provided by the parents that meets the requirements for general releases.
- H. AGENCY RESPONSIBILITY FOR MAINTAINING CONFIDENTIALITY
  - 1. All agencies are required to protect confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages.
  - 2. Each agency or provider must designate one person to be responsible for ensuring the confidentiality of personally identifiable information;
  - 3. All persons collecting or using personally identifying information or using personally identifying information must receive training and instruction regarding state policies and procedures.
  - 4. Each agency or provider must maintain, for public inspection, a current list of the names and positions of employees who have access to personally identifiable information.
- G. DESTRUCTION OF RECORDS
  - 1. The Health and Social Services Department shall inform parents when personally identifiable information collected, maintained, or used under Part C is no longer needed to provide early intervention services to the child.
  - 2. The information must be destroyed at the request of the family. The Department can keep information demonstrating that at one time they served the child and family including the name, address, phone number of the child.
  - 3. When the family requests that information be destroyed, the Department should remind them that the records may be needed by the child or parent for social security, health or other purposes.
- VII. RIGHT TO REVIEW AND CORRECT RECORDS
  - A. ACCESS
    - 1. Participating agencies must presume that the parent has the authority to inspect/review records relating to their child unless it has been advised that the parent does not have the authority under state law.
    - 2. The parents of eligible children must be afforded the opportunity to examine, inspect, and review records regardless of source regarding their child or family that relate to:
      - a. screening, evaluation, assessment, eligibility determination, and the development and implementation of the IFSP;
      - b. the filing of individual complaints dealing with the child or family; and

## Part C Procedural Safeguards

- c. any other area under the Part C regulations involving records about the child and the child's family.
  3. Parents shall not be refused access based on the identity of the agency of provider maintaining the records.
  4. Parents may be refused access to the following records:
    - a. records of service, supervisory, and administrative personnel that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
    - b. records of a law enforcement unit of a public agency or private provider; and
    - c. records relating to an individual who is employed by an agency or provider that are made and maintained in the normal course of business, that relate exclusively to the individual in that individual's capacity as employee, and that are not available for use for any other purpose. This subparagraph does not apply to records relating to a parent who is employed as a result of the parent's status as a recipient of services or as a result of the parent's child receiving services.
  5. If any record includes information on more than one child, parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.
  6. Each agency must keep a record of all parties obtaining access to records collected, maintained, or used (except access by parents and authorized employees of the agency), including:
    - a. the name of the party requesting access;
    - b. the date of access; and
    - c. purpose of access.
- B. RIGHTS RELATED TO REVIEWING RECORDS
  1. The right to review a record includes:
    - a. the right to explanations and interpretations of the record;
    - b. the right to obtain a copy of the record; and
    - c. the right to have a representative of the parent's choosing review the record.
  2. When a parent asks to review a record, the agency or provider maintaining the record, must comply with a request within ten- (10) working day.
  3. When a request for records is made in connection with an IFSP meeting or formal hearing to resolve a complaint the agency or provider shall provide the records prior to the meeting or hearing at least five (5) days before the proceeding.
  4. An agency or provider may not charge a fee to search for or retrieve a record.
- C. PARENT REQUEST TO AMEND A RECORD
  1. A parent may request that information in a record be amended, including deletion, if:
    - a. that information is inaccurate or misleading; or
    - b. that information violates the privacy or other rights of the parent's child or family.
  2. When a parent requests in writing to the Department that a record be amended, the agency or provider must act on that request within ten (10) working days from the time the request is received.
  3. If the agency or provider refuses to amend the records as requested, it must:
    - a. inform parent (s) of the refusal in writing; and

## Part C Procedural Safeguards

- b. advise the parents in writing that they may appeal the refusal and how to invoke the appeal process. The parents have the right to appeal through mediation or the formal hearing process.
- 4. If the parent chooses not to appeal, or loses the appeal, the parent may place in the files of the agency or provider maintaining the contested record a corrective state commenting on the information and/or setting forth the parent's reasons for disagreeing with the decision on appeal. The agency or provider must:
  - a. maintain that statement along with the contested record as long as the record is maintained; and
  - b. provide that statement along with the contested record if the record or information is ever disclosed to any party.
- 5. If the parent wins the appeal, the agency or provider must:
  - a. amend the record
  - b. inform parents in writing.

## D. INFORMATION ABOUT THE MAINTENANCE OF RECORDS

- 1. The Division of Management Services must provide parents with information about the types and locations of records collected, maintained, or used by public agencies or private providers relating to:
  - a. screening, evaluation, assessment, eligibility determinations, or the development and implementation of the IFSP.
  - b. Individual complaints dealing with children or families; and
  - c. any other area under Part C regulations involving records about children and families.
- 2. Each public agency and private provider must maintain and provide to parents, upon request:
  - a. a list of the types and locations of records collected, maintained, or used by the agency or provider relating to:
    - (1) screening, evaluation, assessment, eligibility determinations, or the development and implementations of IFSPs;
    - (2) individual complaints dealing with children or families; and
    - (3) any other area under the Part C regulations involving records about children or families; and the title and address of the person to whom requests to review such records should be made.

## VIII. IMPARTIAL PROCEDURES FOR RESOLVING INDIVIDUAL CHILD COMPLAINTS

## A. SYSTEM ASSURANCE

- 1. The Department of Health and Social Services ensures that a system has been established and is operating for conducting formal hearings that:
  - a. addresses parent's complaints about identification; screening; evaluation; assessments; eligibility determinations; the development, review, and implementation of the IFSP; and the failure to respect parents' procedural rights;
  - b. provides parents a clear and easy-to-use method of requesting a hearing; and
  - c. is capable of resolving through a single proceeding a complaint involving two or more agencies or providers.
  - d. meets the following requirements as required by §99.22 of FERPA, and
    - (1) the hearing will be held within a reasonable time after it has received the request for the hearings from the parent;

**Part C Procedural Safeguards**

- (2) The parent is provided with a notice of the date, time and place, reasonably in advance of the hearing;
- (3) the hearing will be conducted by an individual who does not have a direct interest in the outcome of the hearing;
- (4) the parent will have a full and fair opportunity to present evidence relevant to the issues raised. The parent may be assisted or represented by one or more individuals of his or her own choice, including an attorney;
- (5) the decision will be made in writing within a reasonable period of time after the hearing;
- (6) the decision will be based solely on the evidence presented, and must include a summary of the evidence and the reasons for the decision

**B. DUE PROCESS REQUEST**

- 1. Parents may initiate the request for a hearing on any issue that is in dispute by filing a written complaint with the Division of Management Services.
- 2. Parents shall be offered assistance by the Division of Management Services in filing the complaint.

**C. RESPONSE TO A FILED REQUEST FOR DUE PROCESS**

- 1. The Division of Management Services shall:
  - a. respond within 7 days of receiving the complaint by:
    - (1) notifying the parents of low cost legal advocacy services;
    - (2) notifying parents of their rights related to the hearing process;
    - (3) notifying parents of the option of mediation, including a description of the mediation process and its voluntary nature; and
    - (4) appointing an impartial hearing panel.

**D. PARENT RIGHTS**

- 1. Parents have the following rights with regard to the hearing process:
  - a. the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services;
  - b. the right to present evidence, and confront, cross-examine, and compel the attendance of witnesses;
  - c. the right to prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five (5) days before the proceeding;
  - d. the right to obtain a written or electronic verbatim transcription of the proceeding; and
  - e. the right to obtain written findings of fact and decisions.

**E. CRITERIA FOR APPOINTING HEARING OFFICERS**

- 1. Knowledge of the provisions of Part C and of the needs of and services available to eligible children and their families; and
- 2. be impartial, meaning that:
  - a. they may not be employed by any agency or program involved in the provision of early intervention services or in the care of the child; and  
COMMENT: A person who otherwise qualifies under this section is not an employee solely due to being paid by the agency to implement the complaint resolution process.

**Part C Procedural Safeguards**

- b. they may have no other conflict of interest, either personal or professional, that might impair their objectivity.

**F. RESPONSIBILITIES OF HEARING OFFICERS**

- 1. Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint; and
- 2. Provide a record of the proceedings, including a written decision.

**G. MEDIATION**

- 1. Parents or service providers may request mediation at any time during the complaint process by putting the request in writing to the Department of Health and Social Services. Both parties must sign the request for mediation as an indication of their willingness to engage in mediation.
- 2. Parents may:
  - a. not be required to participate in mediation as a condition of having a formal hearing;
  - b. choose to pursue both mediation and a formal hearing, with the formal hearing proceeding within the time limits prescribed; and
  - c. accept or reject a request for mediation by an agency or provider.
- 3. Upon receipt of the request for mediation the Division of Management Services shall:
  - a. promptly appoint an impartial mediator who will schedule a meeting within ten (10) working days of his/her appointment at a time and place mutually convenient to all involved parties; and
  - b. provide all parties with a copy of a handbook that outlines the mediation process.
- 4. Mediation shall be provided at no cost to either party and in accordance with the process outlined in a mediation handbook.

**H. CONVENIENCE OF PROCEEDINGS**

- 1. Hearings shall:
  - a. occur at a time and place convenient for the parents; and
  - b. be concluded within 30 days from the time of receipt of the complaint, with a written decision being mailed to each party.

**I. DECISIONS**

- 1. are enforceable by the Department of Health and Social Services;
- 2. shall be maintained by the Department of Health and Social Services in a central file, which is accessible to the public and has all personally identifiable information deleted;
- 3. that determine that the information in records is inaccurate, misleading, or violate privacy/rights of the child must be:
  - a. amended, and
  - b. parents must be informed in writing of that decision.

**J. PROVISION OF SERVICES DURING PROCEEDINGS**

- 1. While any proceedings are pending, including mediation, the child and family must continue to receive the early intervention services that were being provided before the complaint was filed, unless the family and agency or provider agree otherwise.

**Part C Procedural Safeguards**

- 2. If the complaint involves an application for initial services, the child and family must receive all services that are not in dispute.
  
- K. CIVIL ACTION: Parents who are aggrieved by the final decision of the formal hearing system may challenge the decision by bringing a civil action in state court within 30 calendar days of the decision or in federal court where there is no time limit.

8/28/94