

## Understanding Procedural Safeguards

Rights and safeguards under 34 CFR § 303.400-.449. Regulations for the Early Intervention Program for Infants and Toddlers with Disabilities, Part C of IDEA (US. Department of Education, 2011)

### Prior written notice (§.421)

The Early Intervention program must give you advanced written notice before your child's eligibility evaluation. You also must have advanced written notice before meetings in which decisions for your child and family will be made such as starting, stopping, changing or refusing services. You must receive notice in a reasonable amount of time so that you can plan to participate. The notice assures that you are made aware before decisions are made or carried out.

### Use of parent's native language or preferred mode of communication (§.25 and .421)

It is your right to thoroughly understand all activities and written records about your child. If you prefer another language or way of communicating we will get an interpreter, whenever possible. The Early Intervention program wants you to understand so that you can be an informed team member and decision-maker.

### Parent consent (§.7)

The Early Intervention program needs your permission to take any actions that affect your child. You will be asked to give your consent in writing before we evaluate or provide services. The early intervention program needs to explain what happens if you give your consent and if you do not give your consent. Parents have the right to withdraw their consent at any time.

### Confidentiality (§.401-417)

Your Early Intervention program must maintain electronic and written records on all children referred to EI. The types of information maintained include child and family demographics (e.g. name, address, family contact information, date of birth etc.), evaluations and assessment results, eligibility determination, IFSP information, and any other relevant records.

The Early Intervention program values the information you and other service and health care providers have learned about your child. We will ask other providers for this information, but we need your written permission to do so. Sometimes this information can be helpful to determine eligibility or to help us understand your child's health issues.

Just as the early intervention program needs your permission to get your child's records from other providers, the records developed by Early Intervention will not be shared without your permission with anyone outside the Early Intervention program unless permitted by state or federal law.

### Access to records (§.405)

The early intervention record is your family's record. You can see anything in the Early Intervention program's records about your child and family. Your EI provider must respond to your request to review your child's records within 10 days of your request and before any meeting regarding an IFSP or any hearing. Parents may have one free copy. If you do not understand the way records are written, the information in the child's record will be explained to you.

If there is information in the record that you believe is wrong, misleading or violates your child or family's privacy you can ask to have it corrected or removed. The program must respond to your request within a reasonable time. If the program does not agree with you they must notify you in writing and explain your right to ask for a hearing. If you ask for a hearing, a hearing officer will make a written decision within 30 calendar days of receiving your Request for a Due Process Hearing (see Due Process Procedures). If the hearing officer agrees that the information is wrong, misleading or violates your child or family's privacy the program will correct the information. If the hearing officer does not agree with you, you may include a statement about the information in the record.

### Parent consent and ability to decline services (§.420)

With the other members of your child's early intervention team, you will consider which services can best help you accomplish the outcomes that you want for your child and family. You will be asked to give your consent for those services decided on by the team. You do not have to agree to all services recommended. You can say no to some services and still get others.

### If you disagree or have a complaint

Sometimes parents and early intervention staff disagree. If this happens there are ways to resolve your concern. The most simple is to bring your concern to your service coordinator. This is often the quickest way to resolve a problem. If you are unable to resolve your concern, you can also talk to a supervisor or the director of your Early Intervention program. If this is not successful you can call the Executive Office of Health and Human Services (EOHHS) at 401 462-3425. EOHHS is the state agency which administers the Rhode Island Early Intervention system. EOHHS staff can assist families by answering questions, offering information and directly interacting with families and Early Intervention staff. If these informal avenues are not successful or if you choose, there are 3 formal ways to resolve a disagreement. You can file a **written complaint**; **request a due process hearing** or **participate in mediation**.

### **Written Complaint (§.434)**

A written complaint may be filed by a parent, organization, or any person if they believe the EI provider has not followed Part C regulations of the Individuals with Disabilities Education Act. You must complete the Rhode Island Early Intervention Written Complaint form and send it to EOHHS, Early Intervention Part C Coordinator, 3 West Road (Virks Building), Cranston, Rhode Island 02920 or email [Jennifer.Kaufman@ohhs.ri.gov](mailto:Jennifer.Kaufman@ohhs.ri.gov). This form is available in the Rhode Island Early Intervention Procedural Safeguards and Funding booklet, which is also online at:

<http://www.eohhs.ri.gov/Consumer/FamilieswithChildren/EarlyIntervention.aspx>

Your service coordinator can also provide you with the form and help you complete it if you would like.

You must send a copy of your complaint to the EI provider at the same time you file your complaint with EOHHS. EOHHS staff will contact you and your provider and offer mediation (see below) as a way to resolve your complaint. If you both do not agree to mediation as a way to resolve your complaint your complaint will be investigated. You will be asked for any additional information you have. You will receive a written report within 60 days that includes the facts and conclusions; the reason for the decision, and corrective actions that will be taken if required. If your complaint was about matters related to evaluation, eligibility, or the type or amount of services offered and you do not agree with the decision, you may request a due process hearing.

### **Mediation (§.431)**

If informal ways of sharing your concerns with your team and the early intervention program don't work, you may file a written complaint or request a due process hearing. Mediation will be offered as a voluntary first step for either of these. A trained, impartial mediator will work to help you and the early intervention program to resolve the problem. You may be able to reach an agreement that satisfies you both. If not, you can go ahead with either the written complaint process or a due process hearing to resolve your complaint. Mediation will not slow down the process unless you agree. Airing and solving problems can improve communication and make programs stronger. Mediation is provided at no cost to you. The meeting is carried out at a time and place that is convenient for you and other parties involved.

### **Due process hearing procedures (§.435-.438)**

A due process hearing is a formal procedure that is another way to file a written complaint. Your complaint must be about matters related to your child's evaluation, eligibility, IFSP, the type or amount of services offered or if there is something in the child's record that you believe is inaccurate, misleading or violates the privacy or other rights of your child or family.

The complaint must be about an incident that occurred not more than one year before the date of the complaint. Mediation will be offered as a voluntary first step.

The hearing will ensure a knowledgeable and impartial person from outside the program hears your complaint and decides how to best resolve it. The hearing officer will make a decision based on testimony of witnesses and evidence. Parents can be accompanied by an attorney, advocate or anyone else at the hearing. Some families may qualify for free legal help by calling Rhode Island Legal Services at (401) 274-2652 (outside the Providence calling area call toll free at 1-800-662-5034). Parents have the right to present evidence, confront, cross examine, and compel the attendance of witnesses; not allow evidence at the hearing that has not been presented to them at least 5 days before the hearing; and to receive a written or electronic transcript of the hearing at no cost. The hearing officer will send a written decision no later than 30 calendar days from when EOHHS receives the Request for a Due Process Hearing unless an extension has been given. If you do not agree with the decision of the hearing officer you may appeal the decision in state or federal court.

You must complete a Request for a Due Process Hearing and send it to EOHHS, Early Intervention Part C Coordinator, 3 West Road (Virks Building), Cranston, RI 02920 or email it to [Jennifer.Kaufman@ohhs.ri.gov](mailto:Jennifer.Kaufman@ohhs.ri.gov). This form is available in the Rhode Island Early Intervention Procedural Safeguards and Funding booklet, or online at: <http://www.eohhs.ri.gov/Consumer/FamilieswithChildren/EarlyIntervention.aspx>. Your service coordinator can also provide you with the form and help you complete it if you need assistance.

A copy of your request for a due process hearing must be sent to the early intervention provider serving the child at the same time you file your request with EOHHS. All services that have been agreed to on the IFSP will be provided during the hearing process.

A full description of your procedural safeguards is included in your **Rhode Island Early Intervention Procedural Safeguards and Funding** booklet. If you have questions about any of these rights, please talk to your service coordinator or speak with the state's Early Intervention Part C Coordinator at (401) 462-3425.