

## PROCEDURAL SAFEGUARDS

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### Introduction

The Kansas Infant-Toddler Services, with emphasis on developing and providing family-guided services with parents as partners, requires safeguards concerning resolution of conflicts, access to records, and confidentiality of information. These safeguards are responsive to the needs of the child and family and result in timely conflict resolution.

### I. Definitions Used in the Section

A. *Parent* means [34 CFR 303.27; §303.37]

- 1) a biological or adoptive parent(s) of a child,
- 2) a foster parent,
- 3) a guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (the term does not include the State if a child is a ward of the State),
- 4) an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare, or
- 5) a child advocate who has been appointed in accordance with subsection III of this manual Section.

B. *Consent* means that [34 CFR 303.7]

- 1) the parent has been fully informed of all information relevant to the activity for which the consent is sought, in the parent's native language, as defined in subsection I, paragraph C, of this manual Section,
- 2) the parents understand and agree in writing to the carrying out of the activity for which consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released, and
- 1) the parents understand that the granting of consent is voluntary and may be revoked at any time. If a parent revokes the consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

C. *Native language*, when used with respect to an individual who is limited English proficient, means [34 CFR 303.25]

- 1) the language normally used by that individual, or
  - (a) in the case of a child, the language normally used by the parents of the child; or

(b) for evaluations and assessments conducted pursuant to §303.321(a)(5)(6), the language normally used by the child if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

- 2) when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, *native language* means the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).

D. *Personally identifiable* means information that includes [34 CFR 303.29 and §99.3]

- 1) the name of the child, the child's parent(s), or other family members,
- 2) the address of the child or the child's family,
- 3) a personal identifier, such as the child's or parent's social security number, other indirect identifiers, such as the infant's or toddler's date of birth, place of birth, and mother's maiden name, or
- 4) a list of personal characteristics or other information that would make the child's or parent's identity easily traceable.

E. *Impartial*, when applied to the mediator or due process hearing officer, means that the person appointed to implement the due process hearing or mediation procedures [34 CFR 303.431(c); 303.435(b)]

- 1) is not an employee of any agency or other entity involved in the provision of early intervention services, other services, or care of the child,
- 2) does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process, and
- 3) otherwise qualifies under this definition and is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing or mediation procedures.

F. *Education records or records* mean early intervention records. [34 CFR 303.3(b)(2)]

G. *Early intervention records* mean all records regarding an infant or toddler that are required to be collected, maintained, or used under Part C of the Act and the regulations in this part. [34 CFR 303.403(b)]

H. *Mediation* means a voluntary process by which participants, with the assistance of an impartial person, resolves a dispute through discussion of options, alternatives and negotiation.

I. *Due process hearing* means a formal hearing process that provides the family or the agency providing the services a forum for considering and determining individual child complaints by an impartial decision-maker. [34 CFR 303.435-303.438]

- J. *Evaluation* means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under Part C of IDEA, including the infant's or toddler's level of functioning in each of the following developmental areas: (1) cognitive; (2) physical, including health, motor, vision and hearing; (3) communication; (4) social or emotional; and (5) adaptive/self-help development. [34 CFR 303.321(a)(2)(i)]
- K. *Assessment* means the initial and ongoing procedures used by appropriately qualified personnel throughout the period of a child's eligibility for early intervention services to identify [34 CFR 303.321]
- 1) the infant's or toddler's unique strengths and needs,
  - 2) the family's resources, priorities, and concerns related to developmental of the child, and
  - 3) the nature and extent of early intervention that are needed by the child and the child's family to meet their identified needs.
- L. *Destruction* means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable. [34 CFR 303.416(b)]
- M. *Participating agency* means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information with respect to a particular child and includes KDHE, Kansas Infant-Toddler Services, and local tiny-k program early intervention service providers, administrators and support staff. It excludes primary referral sources and other agencies who act solely as funding sources for Part C. [34 CFR 303.403(c)]
- N. *Natural environments* mean settings that are natural or typical for a same-aged infant or toddler without a disability and may include the home or community settings and must be in compliance with 34 CFR 303.126. [34 CFR 303.26]

## II. Procedural Safeguards Overview

The Kansas Department of Health and Environment (KDHE) serves as the lead agency for the Kansas Infant-Toddler Services program (also referred to as *tiny-k*). KDHE must ensure, either independently or through their local lead agency, that the procedural safeguards are followed and enforced.

The Child and Family Rights and KSITS Complaints Process Document can be found at:  
[http://www.ksits.org/download/Parents\\_Rights\\_Booklet.pdf](http://www.ksits.org/download/Parents_Rights_Booklet.pdf)

- A. Prior Written Notice and Procedural Safeguards Notice [34 CFR 303.421(a)(b)]
- 1) Prior written notice and the procedural safeguards notice must be provided to the parents of a child within 10 days before the lead agency (KDHE) or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and their family.

- 2) Content of the prior written notice and the procedural safeguards notice shall be in sufficient detail to inform the parents about
  - (a) the action that is being proposed or refused by the early intervention services program,
  - (b) the reasons for taking the action, and
  - (c) all procedural safeguards that are available under Part C, including a description of mediation, how to file an informal complaint, a formal complaint, and a due process complaint, and any timelines under these procedures. (See subsections IV & V in this Section of the manual for these procedures).
- 3) Native language [34 CFR 303.421(c)]
  - (a) The notice must be
    - i. written in language understandable to the general public, and
    - ii. provided in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so.
  - (b) If the native language or other mode of communication of the parent is not a written language, the public agency or designated EIS provider shall take steps to ensure that:
    - i. the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication,
    - ii. the parent understands the notice, and
    - iii. there is written evidence that the requirements of this paragraph have been met.
  - (c) If the parents are deaf or blind, or have no written language, the mode of communication shall be that normally used by the parent (such as sign language, Braille, or oral communication).

B. Parental Consent [34 CFR 303.420(a)(b)(c)]

- 1) Written parental consent shall be obtained before
  - (a) administering screening procedures to determine whether a child is suspected of having a disability,
  - (b) all evaluations and assessments of a child are conducted under §303.321,
  - (c) early intervention services are provided for a child,
  - (d) private insurance is used, and
  - (e) disclosure of personally identifiable information consistent with §303.314.

- 2) If a parent does not give consent under(a), (b), or (c) above, the lead agency shall make reasonable efforts to ensure that the parent
  - (a) is fully aware of the nature of the screening, evaluation and assessment of the child or early intervention services that would be available, and
  - (b) understands that the child will not be able to receive the screening, evaluation, assessment, or early intervention services unless consent is given.

**Note:** If the parents do not consent to a particular early intervention service or withdraw consent after first providing it, the service may not be provided. The early intervention services for which consent is obtained must be provided.

**Note:** In Kansas, local tiny-k programs are not required to gain consent to bill Medicaid. They must however, notify the parents that they are going to bill Medicaid and must obtain consent from parents to release information to Medicaid for billing purposes.

The Parent Notification and Release of Information for Medicaid/KanCare/Physician can be found at:

[http://www.ksits.org/download/Parent\\_Notification\\_and\\_Release\\_of\\_Information\\_for\\_MedicaidKanCarePhysician.doc](http://www.ksits.org/download/Parent_Notification_and_Release_of_Information_for_MedicaidKanCarePhysician.doc)

- 3) If the parents do not give consent, the due process hearing procedures **may not** be used to challenge the parent's refusal to consent to an evaluation and assessment of the infant or toddler for early intervention services.
- 4) The parents of an infant or toddler with a disability
  - (a) may determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention Part C service at any time, and
  - (b) may decline a service after first accepting it, without jeopardizing other early intervention Part C services.

If parental consent for evaluation, assessment, or initiation of services is not given, and the situation warrants, the local tiny-k program may initiate a complaint of neglect with the Department for Children and Families (DCF).

### III. Child Advocate (Surrogate Parent) [34 CFR 303.422]

The Kansas Department of Health and Environment (KDHE) and the Department for Children and Families (DCF) developed the Child Advocate Program to meet the needs of infants and toddlers whose parents are unknown or unavailable. KDHE ensures that all eligible infants and toddlers have a child advocate representing them in critical decisions involving Part C services.

- A. Each local tiny-k program, with the assistance of KDHE and the Kansas foster care system, must ascertain the legal relationship between the adult caregiver and the child prior to screening, evaluation and assessment.
- B. KDHE shall assign a child advocate to an eligible infant or toddler if one of the following conditions is met:
- 1) No parent (as defined in subsection I (A) above) can be identified
  - 2) A local tiny-k program in conjunction with other public agencies, after reasonable efforts, cannot locate a parent
  - 3) The child is a ward of the State under the laws of Kansas and parental rights have been severed.
- C. The following methods shall be used for assigning a child advocate.
- 1) DCF/Foster Care case workers, local tiny-k programs, contractor staff, and others must inform KDHE upon determining that a child needs a child advocate.
  - 2) KDHE must make reasonable efforts to appoint an appropriate child advocate no more than 30 days after it is determined that an infant or toddler needs a child advocate.
  - 3) KDHE notifies the child advocate, the local tiny-k program and the DCF/Foster Care case worker of the appointment.
  - 4) A judge who oversees the case of an infant or toddler who is a ward of the state, can appoint a child advocate for that child.
- Note:** When determining the need for and requesting the assignment of a child advocate for an infant or toddler who is a ward of the State or who is placed in foster care, the local tiny-k program must consult with the local public agency/case worker that has been assigned care of the child.
- D. The following criteria are to be used for selecting child advocates.
- 1) The child advocate must complete training to become a child advocate.
  - 2) KDHE must ensure that a person selected as a child advocate
    - (a) is not an employee of KDHE, the local tiny-k program, the local lead agency or any other public agency or early intervention services provider that provides early intervention services, care, or other services to the infant or toddler or any family member of the infant or toddler,
    - (b) has no personal or professional interest that conflicts with the interests of the infant or toddler whom he or she represents, and
    - (c) has knowledge and skills that ensure adequate representation of the infant or toddler.

- 3) A person who is otherwise qualified to be a child advocate (surrogate parent) is not an employee of the agency solely because he or she is paid by the agency to serve as a child advocate.

#### E. Child advocate responsibilities

- 1) The child advocate has the same rights as a parent for all purposes under Kansas Infant-Toddler Services programs. A child advocate may represent an infant or toddler in all matters related to:
  - (a) the screening, evaluation and assessment of the infant or toddler,
  - (b) development and implementation of the infant's or toddler's IFSP, including annual evaluations and periodic reviews,
  - (c) the ongoing provision of early intervention services to the infant or toddler, and
  - (d) any other rights established under this part.
- 2) A child advocate should sign consent for screening, evaluation, provision of early intervention services, and for the release of any early intervention records.

For additional information, contact KDHE at 785.296.6135 or 1.800.332.6262.

### IV. Lead Agency Procedures for Complaint Resolution [34 CFR 303.431-303.438]

KDHE offers parents of infants or toddlers in Kansas' early intervention program and others (such as medical professionals, service providers, concerned citizens), options for the resolution of complaints in a timely, impartial and consistent manner through mediation, an informal complaint process, a formal written complaint process, and due process complaints.

#### A. Informal Complaint

- 1) KDHE offers a toll free number **(1.800.332.6262)** where parent issues/concerns may be received for review and analysis. When an individual contacts this number, the nature and scope of the concern is recorded by a consultant, then forwarded to Kansas Infant-Toddler Services staff for review and resolution.
- 2) Most issues/concerns should be resolved within 10 to 15 business days.
- 3) Any issues/concerns that are not resolved within 15 days will be forwarded to the State Part C Coordinator for facilitation of resolution.
- 4) All individuals who call this number are advised of their right to file a request for a formal complaint, mediation or due process fair hearing at any time.

## B. Formal Written Complaint

- 1) An organization or an individual may file a signed written complaint using the *Formal Complaint Request* form or a written statement that includes:

The Formal Complaint Request Form can be found at:

[http://www.ksits.org/download/ITS\\_Formal\\_Complaint\\_Request\\_Form.pdf](http://www.ksits.org/download/ITS_Formal_Complaint_Request_Form.pdf)

- (a) a statement that KDHE, a local tiny-k program service provider or an associated service provider has violated a requirement of Part C of the IDEA, the regulations in this part, or the Kansas Infant-Toddler Services regulations,
  - (b) the facts on which the complaint is based,
  - (c) the signature and complainant's contact information, and
  - (d) if alleging violations with respect to a specific infant or toddler,
    - i. the infant's or toddler's name and address,
    - ii. the name of the early intervention service provider,
    - iii. a description of the nature of the problem of the infant or toddler, including facts related to the problem, and
    - iv. a proposed resolution of the problem.
- 2) **Limitations.** The alleged violation must have occurred not more than one year before the date that the complaint is received by KDHE.
  - 3) The party filing the complaint must forward a copy of the complaint to the local tiny-k program/early intervention service provider serving the child, at the same time the party files the complaint with KDHE.
  - 4) In resolving a complaint in which it finds failure to provide appropriate services, KDHE will address
    - (a) 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 infant or toddler or the child's family, and
    - (b) appropriate future provision of services for all infants and toddlers with disabilities and their families.
  - 5) In accordance with CFR §303.433, KDHE has in its complaint procedures a time limit of 60 calendar days after a complaint is filed to:
    - (a) carry out an independent on-site investigation, if KDHE determines that an investigation is necessary,

- (b) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint,
  - (c) provide KDHE, the local tiny-k program, or EIS provider with an opportunity to respond to the complaint, including
    - i. a proposal to resolve the complaint, and
    - ii. an opportunity for the parties to engage in mediation,
  - (d) review all relevant information and make an independent determination as to whether there has been a violation of a requirement of Part C of IDEA, the regulations of this part, or the Kansas Infant-Toddler Services State regulations,
  - (e) issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for KDHE's final decision,
  - (f) Include procedures for effective implementation of KDHE's final decision, if needed, including
    - i. technical assistance activities,
    - ii. negotiations,
    - iii. corrective actions to achieve compliance.
- 6) KDHE's procedures permit an extension of the 60-day time limit in #5 above only if (a) exceptional circumstances exist with respect to a particular complaint or (b) the parent, KDHE, and the local tiny-k program/early intervention service provider involved agree to extend the time to engage in mediation.
- 7) If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, or which one or more are part of that hearing, KDHE will 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 hearing will be resolved within the 60 calendar-day timeline using the complaint procedures described in #5 of this section.
- 8) If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties: (a) the hearing decision is binding on that issue; and (b) KDHE must inform the complainant to that effect.
- 9) Any complaint alleging that a tiny-k program, KSITS, or KDHE failed to implement a due process hearing must be resolved by KDHE.

## V. Requests for Mediations and Due Process Hearings [34 CFR 303.430(e); §303.431; §§303.435-303.438]

### A. Filing

- 1) A parent or local tiny-k program/early intervention service provider may file a written request for a due process hearing and/or mediation on any issue in dispute as to identification, evaluation, or placement of the infant or toddler, or the provision of appropriate early intervention services to the child and the child's family. A parent or provider may also seek resolution of a dispute by filing a complaint.
  - (a) A request for a due process hearing or mediation shall be in writing using the *Request for Due Process Hearing* form, the *Request for Mediation* form or a written request that includes the information found on the appropriate form.

The Request for Due Process Hearing Form can be found at:

[http://www.ksits.org/download/ITS\\_Due\\_Process\\_Hearing\\_Request\\_Form.pdf](http://www.ksits.org/download/ITS_Due_Process_Hearing_Request_Form.pdf)

The Request for Mediation Form can be found at:

[http://www.ksits.org/download/ITS%20Mediation\\_Request\\_Form.pdf](http://www.ksits.org/download/ITS%20Mediation_Request_Form.pdf)

- (b) Within three business days of receiving a request for a due process hearing or mediation, KDHE staff shall notify the parent of the right to be advised by an individual with special knowledge of early intervention services, the option of mediation, including a description of the mediation process and its voluntary nature, and the alternative of having a due process hearing. KDHE shall also send the parent a copy of the notice of rights specified in this section.
  - (c) During the time period of any proceeding involving a complaint, unless all parties involved otherwise agree, the child and family will continue to receive early intervention services consented to on the IFSP.
  - (d) If the complaint involves an application for initial services, the child and family must be provided those services that are not in dispute.
  - (e) If there is a dispute between agencies or providers as to payment for early intervention services provided under the IFSP, KDHE shall ensure the provision of services until the dispute is resolved.

### B. Mediation Process:

- 1) Whenever a hearing is requested, parties must be offered the choice to resolve their disputes through a mediation process. Mediation may also be offered and accessed at any time to resolve a dispute. If mediation is requested, KDHE shall promptly appoint a qualified and impartial mediator who is trained in effective mediation techniques. The mediator shall schedule a meeting within seven days at a mutually convenient time and place.

- 2) Impartial means that the mediator is not an employee of an agency providing services or care to the child, and has no other personal or professional interests that would conflict with his objectivity. (A person who otherwise qualifies as a mediator, is not considered an employee solely because he is paid to serve as a mediator.)
- 3) Timelines for mediation may be extended upon agreement by both parties.
- 4) KDHE will ensure that the mediation process is:
  - (a) voluntary on the part of the parties
  - (b) is not used to deny or delay a parent's right to a due process hearing or any other rights afforded under Part C of the Act, and
  - (c) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- 5) A parent may also request mediation at any time during the hearing process.
- 6) KDHE shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.
- 7) KDHE must select mediators on a random, rotational, or other impartial basis.
- 8) KDHE shall bear the cost of the mediation process including the costs of meetings.
- 9) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
- 10) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and is signed by both the parent and a representative of KDHE who has the authority to bind such agency.
- 11) A written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.
- 12) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under Part C.

C. Procedures to Address the Requests for Due Process Hearing:

- 1) Upon receipt of a request, using the *Request for Due Process Hearing* form, or written correspondence that includes the same information, KDHE shall promptly appoint an impartial hearing officer.

The Request for Due Process Hearing Form can be found at:

[http://www.ksits.org/download/ITS\\_Due\\_Process\\_Hearing\\_Request\\_Form.pdf](http://www.ksits.org/download/ITS_Due_Process_Hearing_Request_Form.pdf)

- 2) If a parent initiates a request for a due process hearing, KDHE will inform the parent of the availability of mediation described in section V (B).
- 3) The hearing officer shall
  - (a) have knowledge about the provisions of Part C of IDEA and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families,
  - (b) promptly arrange for a hearing at a time and place that is reasonably convenient to the parents and duly notify the parties,
  - (c) listen to the presentation of the relevant viewpoints about the due process complaint,
  - (d) examine all information relevant to the issues,
  - (e) seek to reach a timely resolution of the due process complaint,
  - (f) provide a record of the proceedings and mail a written decision to each of the parties, and
  - (g) not be an employee of an agency providing services or care to the child, and have no other personal or professional interests that would conflict with his objectivity. (A person who otherwise qualifies as a hearing officer, is not considered an employee solely because he is paid to serve as a hearing officer.)
- 4) The hearing process shall be governed by all appropriate Federal and State rules and regulations. In addition, the parent shall have the right to
  - (a) be accompanied and advised by their own legal counsel and by other individuals with special knowledge or training with respect to early intervention services,
  - (b) present evidence and confront, cross-examine, and compel the attendance of witnesses,
  - (c) prohibit the introduction of evidence at the hearing that has not been disclosed to the parent at least five days prior to the hearing,
  - (d) obtain a written or electronic verbatim transcription of the hearing at no cost to the parent(s), and
  - (e) receive a written copy of the findings of fact and decisions at no cost to the parent(s) and within 30 days of the KDHE's receipt of the request for a hearing.
- 5) Not later than 30 days after the receipt of a request for hearing, the parties shall be notified by mail in writing of the decision, the reasons for the decision, all relevant findings of fact and conclusions of law, and the right to appeal the decision in state or federal court.

- 6) A hearing officer may grant specific extensions of the time beyond the period set out in 34 CFR 303.437(b) at the request of either party.
- 7) The hearing officer's decision shall be promptly implemented in accordance with the hearing officer's decision.

#### D. Status of Infant or Toddler During Proceedings

- 1) During the pendency of any administrative or judicial proceeding involving a request for a due process hearing under section V, unless KDHE and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided in the setting identified in the IFSP that is consented to by the parents.
- 2) If the due process complaint involves an application for initial services under Part C of the Act, the infant or toddler must receive those services that are not in dispute.

### VI. Confidentiality and Access Rights [34 CFR 303.401-303.417; §303.209 (b)(1)(i)(ii)]

#### A. Confidentiality Procedures

- 1) The parent of an infant or toddler referred to the Kansas Infant-Toddler Services is afforded the right to confidentiality of personally identifiable information. The regulations in 34 CFR §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by participating agencies, including the KDHE and the local tiny-k programs and their service providers, in accordance with the protections under the Family Education Rights and Privacy Act (FERPA).
- 2) The confidentiality procedures described in this section apply to the personally identifiable information of an infant or toddler and the child's family that
  - (a) is contained in early intervention records collected, used, or maintained under this part by the KDHE or the local tiny-k programs and their service providers, and
  - (b) applies from the point in time when the infant or toddler is referred for early intervention services until the KDHE or the child's local tiny-k program is no longer required to maintain that information.
- 3) To enable the Kansas Infant-Toddler Services as well as Local Education Agencies (LEAs) under Part B to identify all children potentially eligible for services under Part C and Part B of IDEA, each local tiny-k program **must disclose** to the State Education Agency (SEA) and the LEA where the infant or toddler resides the following personally identifiable information:
  - (a) The infant's or toddler's name
  - (b) The infant's or toddler's date of birth
  - (c) Parent contact information (including parents' names, addresses, and telephone number)

- (d) Additional information may include family service coordinator's name and contact information and the languages spoken by the child and family

## B. Notice to Parents

- 1) Each local tiny-k program must give notice when an infant or toddler is referred under Part C of the Act. The notice must be adequate to fully inform parents about the confidentiality requirements as outlined in the *Child and Family Rights and KS ITS Complaints Process* form including:

The Child and Family Rights and KSITS Complaints Process Document can be found at:

[http://www.ksits.org/download/Parents\\_Rights\\_Booklet.pdf](http://www.ksits.org/download/Parents_Rights_Booklet.pdf)

- (a) a description of the infants or toddlers on whom personally identifiable information is maintained, the types of information sought, the methods each local tiny-k program intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information,
- (b) a summary of the policies and procedures that the local tiny-k program shall follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information,
- (c) a description of all of the rights of parents and infants and toddlers regarding this personally identifiable information, including the rights under the Part C confidentiality provisions and implementing regulations, and
- (d) a description of the extent that the notice is provided in the native languages of the various population groups in the local tiny-k program and its community.

## C. Access Rights

- 1) Each local tiny-k program must permit parents to inspect and review any of the infant's or toddler's records that are collected, maintained, or used by the local tiny-k program under Part C of the IDEA. The local tiny-k program must comply with a parent's request without unnecessary delay and before any meeting regarding an IFSP, before the provision of early intervention services, or a hearing relating to the identification, evaluation, or placement of the infant or toddler and in no case more than 10 days after the request has been made.
- 2) The right to inspect and review early intervention records under this section includes
  - (a) a response from the local tiny-k program to reasonable requests for explanations and interpretations of the records,
  - (b) a request that the local tiny-k program provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records, and
  - (c) the right to have a representative of the parent inspect and review the early intervention records.

- 3) A local tiny-k program may presume that the parent has authority to inspect and review records relating to his or her child unless the local tiny-k program has been provided documentation that the parent does not have the authority under applicable state laws governing such matters as custody, foster care, guardianship, separation, and divorce.

#### D. Record of Access

Each local lead agency must keep a list of authorized personnel who have access to early intervention records. The agency must keep a record of parties obtaining access to records collected, maintained, or used as part of the early intervention services (except access by parents and authorized employees of the local lead agency). The following should be included in the record.

- 1) The name of the party
- 2) The date access was given
- 3) The purpose for which the party is authorized to use the early intervention records.

#### E. Records on More Than One Infant or Toddler

If any early intervention record includes information on more than one infant or toddler, the 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. Examples include but are not limited to: team meeting notes, foster siblings in the same home, infants or toddlers in child care.

#### F. List of Types and Locations of Information

Each local tiny-k program shall provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the local tiny-k program.

#### G. Fees for Records

- 1) Each participating agency may charge a fee for copies of records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review the records.
- 2) A participating agency may not charge a fee to search for or to retrieve information.
- 3) A participating agency must provide at no cost to parents, a copy of each evaluation, assessment, and IFSP as soon as possible after each IFSP meeting.

#### H. Amendment of Records at Parent's Request

- 1) A parent who believes that information in the early intervention records collected, maintained, or used, is inaccurate, misleading, or violates the privacy or other rights of the infant or toddler or parent, may request that the participating agency that maintains the information amend the information.

- 2) The participating agency must decide whether to amend the information in accordance with the request within 30 calendar days after receipt of the request.
- 3) If the participating agency refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing.

#### I. Opportunity for a Hearing

The participating agency must, on request, provide parents with an opportunity for a due process hearing (according to Part C requirements) to challenge information in their child's early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents.

#### J. Result of Hearing

- 1) If, as a result of the hearing, the local tiny-k program decides that the information is inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, the local tiny-k program must amend the information accordingly and inform the parent in writing.
- 2) If, as a result of the hearing, the local tiny-k program decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, the parent must be informed his or her right to place, in the child's early intervention records, a statement commenting on the file information or setting forth any reasons for disagreeing with the decision of the local tiny-k program.
- 3) Any explanation placed in the early intervention records of the infant or toddler under this section shall
  - (a) be maintained by the local tiny-k program as part of the early intervention records of the infant or toddler as long as the record or contested portion is maintained by the local tiny-k program, and
  - (b) if the early intervention records of the infant/toddler or the contested portion are disclosed by the participating agency to any party, the explanation must also be disclosed to the party.

#### K. Hearing Procedures

A hearing regarding record content must be conducted according to the procedures of FERPA, 34 CFR §99.22.

#### L. Consent Prior to Disclosure or Use

- 1) Parental consent must be obtained before personally identifiable information is:
  - (a) disclosed to anyone other than authorized representatives, officials, or employees of participating agencies, collecting, maintaining, or using the information, or

- (b) used for any purpose other than meeting a requirement.
- 2) A lead agency or other participating agency may not disclose personally identifiable information, except to participating agencies (including the lead agency and tiny-k program service providers) that are part of the State's Part C system, without parental consent unless authorized to do so.
  - (a) Specific information will be disclosed to an SEA/LEA in order to identify all children who are potentially eligible for Part B services. (Please see Transition section of manual.)
  - (b) Parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement.
- 3) According to FERPA, the request for release of information must
  - (a) specify the records that may be disclosed,
  - (b) state the purpose of the disclosure of identifiable information, and
  - (c) identify the party or class of parties to whom the disclosure may be made.

All releases are revocable at any time and parents may request a copy of any information/records disclosed.

Parent Notification and Release of Information for Medicaid/KanCare/Physician form can be found at:

[http://www.ksits.org/download/Parent\\_Notification\\_and\\_Release\\_of\\_Information\\_for\\_MedicaidKanCarePhysician.doc](http://www.ksits.org/download/Parent_Notification_and_Release_of_Information_for_MedicaidKanCarePhysician.doc)

- 4) The lead agency must provide policies and procedures to be used when a parent refuses to provide consent under this section, provided that those procedures do not override a parent's right to refuse consent under 303.420, the parent right to decline services.
- 5) When parents refuse consent, the participating agencies must explain to the parents how refusal will affect their ability to receive services for their child.

#### M. Safeguards

- 1) Each participating agency must protect the confidentiality of personally identifiable information at collection, maintenance, use, storage, disclosure, and destruction stages.
- 2) One official (e.g., the tiny-k program coordinator) at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.
- 3) All people collecting or using personally identifiable information shall receive training and/or instruction regarding the KDHE's policies and procedures under this part.

- 4) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

#### N. Storage of Records

In Kansas, a child's records must be maintained for six years from date of the child's exit from early intervention services. Files must be locked in a filing cabinet and housed in a facility of the participating agency. **Note:** Procedures on electronic files are being developed.

#### O. Destruction of Information

- 1) The participating agency shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide early intervention services to the infant or toddler.
- 2) The information must be destroyed at the request of the parents. However, a permanent record of an infant's or toddler's name, birth date, parent contact information (including address and phone number), names of service coordinator(s) and early intervention service provider(s), and exit data (including year and age upon exit and any programs entered into upon exiting) must be maintained for at least six years.

#### P. Enforcement

KDHE implements a monitoring system that includes sanctions to ensure that Kansas Infant-Toddler Services' policies and procedures are followed and that the requirements of the IDEA 2011 and the federal and state regulations for Part C are met.