

**Guide to
Family Rights
under the
Individuals with Disabilities
Education Improvement Act
of 2004 (IDEA), Part C**



**Birth to Three
Early Intervention
System**



Additional copies of this publication may be obtained by contacting:

Birth to Three Early Intervention

<http://www.dhss.delaware.gov/dms/epqc/birth3/directry.html>

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Introduction

At Child Development Watch, parents are an important part of the decision making process for their children.

As the parent, you know your child best because you live with and care for him or her each day.

Our goal is to build a partnership between family members and program staff.

As you participate in the program, your service coordinator will talk about your rights.



The requirements that protect your rights can be found under the federal law, Individuals with Disabilities Education Act (IDEA), as amended in 2004. Part C of IDEA and its implementing regulations at 34 CFR Part 303 provide the specific requirements for Child Development Watch.

This guide was created to explain your rights.

As a result of the December 3, 2004 amendments to the Individuals with Disabilities Education Act (IDEA 2004), parental rights in Part C have been revised.

Until final regulations are issued by the U.S. Department of Education implementing the new law, this document will be used to notify you of your rights.

Please review it carefully and if you have questions or need assistance in understanding the provisions of Child Development Watch, contact your service coordinator.



If you have questions or would like to discuss a concern, you may call your Service Coordinator or the Child Development Watch Clinic Manager at:
(302) 283-7240 in New Castle County, or
(302) 424-7300 in Kent and Sussex Counties.



You may also call the Birth to Three Office at Delaware Health and Social Services, Division of Management Services at (302) 255-9134 if you have questions or would like to talk to someone about your rights and participation in Child Development Watch.

For more information about Child Development Watch, please read the ***Family Guide to Child Development Watch***. You may get a copy of the ***Family Guide*** by calling the Birth to Three Office or Child Development Watch.

What are my rights?

As a parent, you have the following general rights under IDEA:

- the right to evaluation, assessment, IFSP development, service coordination and procedural safeguards at no cost. You may be charged for other early intervention services on a sliding fee schedule. However, your inability to pay will not prevent your child or family from receiving services;
- the right, if eligible under Part C, to appropriate early intervention services for your child and family as addressed in an Individualized Family Service Plan (IFSP);
- the right to request a change in service coordinators;
- the right to choose not to use your health insurance to pay for early intervention services;
- the right to receive timely written notice (Prior Notice) before a change is proposed or refused in the identification, evaluation, or placement of your child, or in the provision of services to your child or family;

- the right to receive services in your child's natural environment to the extent appropriate for your child;
- the right to have all personally identifiable information treated as confidential; and
- the right to an impartial hearing to resolve parent/provider disagreements.



How do I give consent to participate in Child Development Watch?

Consent means that:

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

Your written consent must be obtained before:

- conducting the initial evaluation and assessment of your child; and
- initiating the provision of early intervention services. If you do not give consent, someone from Child Development Watch shall make reasonable efforts to ensure that you:
 1. Are fully aware of the nature of the evaluation and assessment or the services that would be available; and
 2. Understand that your child will not be able to receive the evaluation and assessment or services unless consent is given.

If you do not give your consent for initial evaluation, someone from Child Development Watch may provide encouragement by:

- providing you with relevant literature or other materials;
- offering you peer counseling to enhance your understanding of the value of early intervention and to address your concerns about participation in Child Development Watch; and
- periodically renewing contact with you, on an established time schedule, to determine if you have changed your mind concerning the desirability of recommended procedures or services.

In addition, as the parent of a child eligible under Child Development Watch, you may determine whether your child or other family members will accept or decline any early intervention services under Child Development Watch in accordance with Delaware Law. You also may decline such a service after first accepting it, without jeopardizing other early intervention services.

Finally you have the right to written notice of and written consent to the exchange of any personally identifiable information collected, used, or maintained under Child Development Watch, among agencies consistent with Federal and State laws.

How and when will I receive Prior Notice?

Written prior notice must be given to you not less than 10 business days before Child Development Watch 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 sufficient in detail to inform you about:

1. The action that is being proposed or refused;
2. The reasons for taking the action;
3. All procedural safeguards that are available under Child Development Watch; and
4. The state complaint procedures including a description of how to file a complaint and the timelines under those procedures.

The notice must be:

1. Written in language understandable to the general public and provided in your native language unless it is clearly not feasible to do so.

2. If your native language or other mode of communication is not a written language, Child Development Watch shall take steps to that:
 - a. The notice is translated orally or by other means to you in your native language or other mode of communication;
 - b. You understand the notice; and
 - c. There is written evidence that these requirements have been met.

3. If you are deaf, blind, unable to read, or have no written language, the mode of communication must be that normally used by you (such a sign language, Braille, or oral communication).

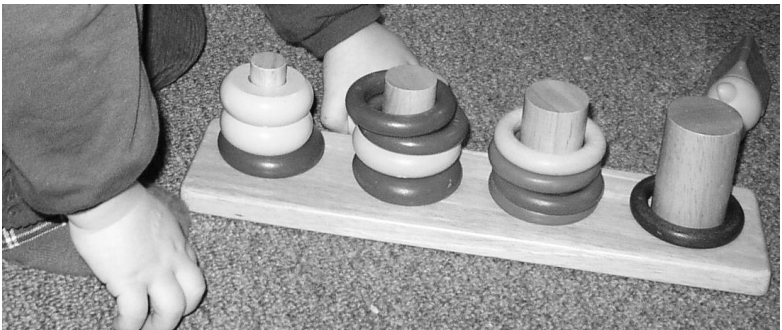


What are Educational Surrogate Parents?

The rights of children eligible under Child Development Watch are protected if:

1. No parent can be identified;
2. Child Development Watch, after reasonable efforts, cannot discover the location of a parent;
3. Legal custody of the child and all parental rights and responsibilities for the care and custody of the child have been terminated by Court order; or
4. The child is a ward of the state under the laws of Delaware.

An individual is assigned to act as an educational surrogate for the parent according to the procedures that follow. The procedures include a method for determining whether a child needs an educational surrogate parent and assigning an educational surrogate to the child.



The following criteria are employed when selecting educational surrogate:

1. Educational surrogate parents are selected in ways permitted by state law.
2. A person selected as an educational surrogate:
 - a. Has no interest that conflicts with the interest of the child he or she represents;
 - b. Has knowledge and skills that ensure adequate representation of the child;
 - c. Is not an employee of any agency of a person or an employee of a person providing early intervention services to the child or to any family member of the child. A person who otherwise qualifies to be an educational surrogate parent is not an employee solely because he or she is paid by an early intervention provider agency to serve as an educational surrogate parent; and
 - d. Resides in the same general geographic areas as the child, whenever possible.



An educational surrogate parent may represent the child in all matters relating to:

1. The evaluation and assessment of the child;
2. Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;
3. The ongoing provision of early intervention services to the child; and
4. Any other rights established under Child Development Watch.

[NOTE: Delaware Part C practice ensures that to be considered a "parent" under Part C of IDEA, foster care parents must receive training and must be appointed as an *Educational Surrogate Parent*.]

How is information about my child and family protected and can I see my child's records?

In accordance with the Confidentiality of Information procedures in IDEA, you must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations; development and implementation of IFSPs, individual complaints dealing with your child, and any other area under Child Development Watch involving records about your child and your family.



Early intervention provider agencies and state partner agencies must provide you the opportunity to inspect and review any records relating to your child which are collected, maintained or used under Child Development Watch. Such requests must be complied with, without unnecessary delay, and before any meeting regarding an IFSP or hearing relating to identification, evaluation, or placement of your child and in no case more than 45 days after the request has been made.

The right to inspect and review records includes:

1. The right to a response from early intervention provider agencies and state partner agencies to reasonable requests for explanations and interpretations of the record;
2. The right to request that early intervention provider agencies and state partner agencies provide records containing the information if failure to provide those copies would effectively prevent you from exercising the right to inspect and review the records; and
3. The right to have someone represent you to inspect and review the record.

Early intervention provider agencies and state partner agencies may presume that you have the authority to inspect and review records relating to your child unless it has been advised that you do not have the authority under applicable State law governing such matters as guardianship, separation and divorce. Each early intervention provider agency and state partner agency shall keep a record of parties obtaining access to early intervention records collected, obtained, or used under Child Development Watch (except access by parents and authorized employees of such agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the record.

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

Each early intervention provider agency or state partner agency shall provide you, on request, a list of the types and locations of records collected, maintained, or used by the agency.



An early intervention provider agency or state partner agency may charge a fee for copies or records which are made for parents under Child Development Watch if the fee does not effectively prevent you from exercising your right to inspect and review

those records. Such agency may not charge a fee to search for or to retrieve information under Child Development Watch.

If you believe that information in records collected, maintained, or used under Child Development Watch is inaccurate or misleading, or violates that privacy or other rights of your child or family, you may request the early intervention provider agency or state partner agency which maintains the information to amend the information. Such agency decides whether to amend the information in accordance with the request within ten business days of receipts of the request. If the agency decided to refuse to amend the information in accordance with the request, you will be informed of the refusal and be advised of the right to a hearing.

The agency, on request, provides an opportunity for a hearing to challenge information in early intervention records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

If, as a result of the hearing, the agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it amends the information accordingly and will inform you in writing.

If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, you will 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 agency.

Any explanation placed in the records of the child under Child Development Watch must:

- a. be maintained by the agency as part of the records of the child as long as the record or contested portion (that part of the record with which you disagree) is maintained by the agency; and
- b. if the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

A hearing held under confidentiality of information must be conducted according to the procedures under 99.22 of Family Education Rights & Privacy Act (FERPA) (34 CFR Part 99).

Parental Consent:

Parental consent must be obtained before personally identifiable information is:

1. disclosed to anyone other than officials of early intervention provider agencies and state partner agencies collecting or using information under Child Development Watch; or
2. used for any purpose other than meeting a requirement under Child Development Watch.

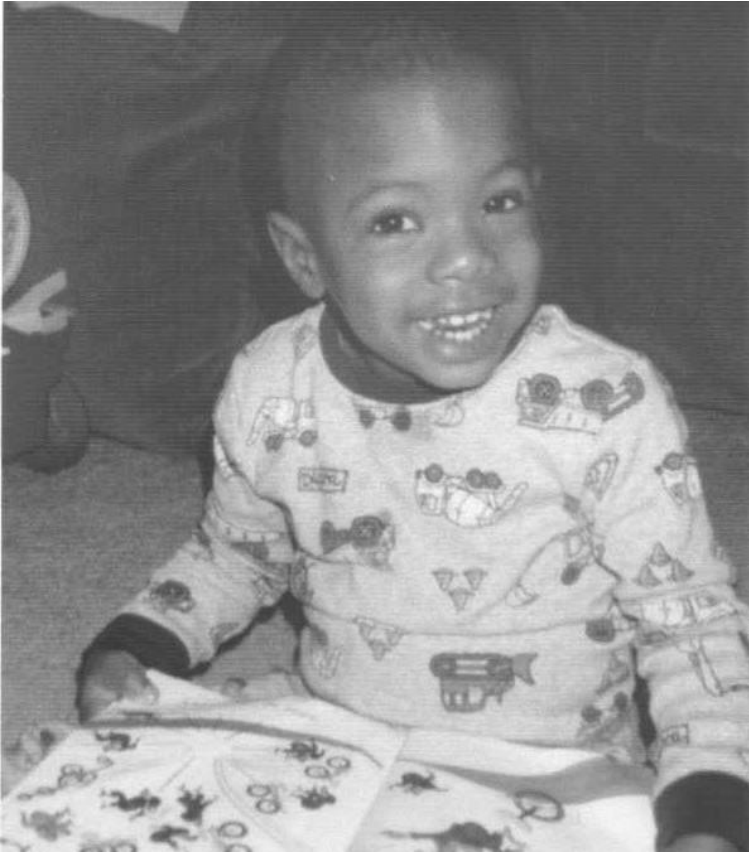
Information from your child's early intervention record cannot be released to early intervention provider agencies and state partner agencies without your consent unless authorized to do so under FERPA. If you refuse to provide consent for the release of records, the early intervention provider agency or state partner agency may use FERPA hearing procedures to obtain the release of information.



How your child's information is protected:

1. Each early intervention provider agency and state partner agency protects the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages;
2. One official of each early intervention provider agency and state partner agency assumes responsibility for insuring the confidentiality of any personally identifiable information;
3. All persons collecting or using personally identifiable information receive training or instruction regarding Delaware policies and procedures under IDEA and FERPA;
4. Each early intervention provider agency and state partner agency maintains, for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally identifiable information;





5. Early intervention provider agencies and state partner agencies inform parents when personally identifiable information collected, maintained, or used under Child Development Watch is no longer needed to provide services to the child; and
6. The information is destroyed, at the request of the parents. (Permanent records of child's name, address, phone number may be maintained.)

What if I have a concern or complaint?

The Birth to Three Early Intervention System has several processes to address parent(s)' complaints regarding Child Development Watch or any of its early intervention provider agencies or state partner agencies about:

1. identification
2. evaluation
3. placement of your child, or
4. provision of appropriate early intervention services to your child or family.

If you have a concern in any of these areas, you should contact your service coordinator or the Child Development Watch Clinic Manager.

At any time, you may file a request to have one of the formal dispute processes described in the following three sections in this document (State Complaint Procedures, Mediation, or an Impartial Due Process Hearing.)

You may file a written complaint with the Birth to Three Early Intervention System of the Division of Management Services (DMS):

Birth to Three Early Intervention

<http://www.dhss.delaware.gov/dms/epgc/birth3/directry.html>

Herman M. Holloway, Sr. Campus
1st Floor, Main Administration Building
1901 N. DuPont Highway
New Castle, DE 19720
Phone: (302) 255-9134
Fax: (302)255-4407

Choosing state complaint procedures

If you believe Child Development Watch has violated a federal or state regulation, you may file a complaint. Upon receiving your written complaint, an investigation will be completed.

A complaint is a written signed statement by an individual or organization, including a complaint filed by an individual or organization from another state containing a statement that Child Development Watch, an early intervention provider agency or state partner agency has violated a requirement of federal or state statutes or regulations that apply to Part C and a statement of the facts on which the complaint is based.

In resolving the complaint in which the Birth to Three Early Intervention System has found a failure to provide appropriate services, the state Birth to Three Early Intervention System, pursuant to its general supervisory authority under Part C of the IDEA, must address:

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

The Birth to Three Early Intervention System appoints a complaint investigator. The complaint investigator may conduct an independent onsite investigation if it determines that one is necessary. The complaint investigator shall give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

After reviewing all relevant information, the Birth to Three Early Intervention System shall make an independent determination and send a written report of the final decision to all parties involved, including findings of fact, conclusions, and reasons for final decision.

All complaints must be resolved within 60 calendar days after the receipt of the complaint by the Birth to Three Early Intervention System. An extension of the 60 day time lime may be granted only if exceptional circumstances exist with respect to a particular complaint.

The Birth to Three Early Intervention System implements procedures for the effective implementation of its final decision, 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 Birth to Three Early Intervention System 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 using the time limit and procedures described above.

If an issue is raised in a complaint filed has previously been decided in a due process hearing involving the same parties:

1. The hearing decision is binding; and
2. The Birth to Three Early Intervention System must inform the complainant to that effect.

A complaint alleging a failure to implement a due process hearing decision must be resolved by the Birth to Three Early Intervention System.



Choosing Mediation – an option for resolving a complaint without a formal hearing

Mediation is an effective way to resolve differences between you and Child Development Watch.

It is provided at no cost to you and conducted by someone who is not employed by Child Development Watch or the Birth to Three Early Intervention System.

The Birth to Three Early Intervention System ensures that procedures are established and implemented to allow parties to disputes involved in the proposal to initiate or change the identification, evaluation or placement of the child or the provision of appropriate early intervention services to the child and the child's family, including matters that arise prior to the filing of a due process hearing, to resolve the disputes through a mediation process.

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.

An agreement reached by the parties to the dispute in the mediation must be set forth in a written mediation agreement.

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.



The parties to the mediation process may be required to sign a confidentiality pledge prior to the beginning of the process.

If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

1. States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and
2. Is signed by both the parent and a representative of Child Development Watch, the early intervention provider agency or state partner agency who has the authority to bind such program.

A written, signed mediation agreement under this section is enforceable in any state court of competent jurisdiction or in a district court of the United States.

Choosing an Impartial Due Process Hearing

An impartial due process hearing is a formal procedure conducted by an impartial hearing officer.

Families may request an impartial due process hearing by filing a complaint with the Birth to Three Early Intervention System in Delaware Health and Social Services. Send your written complaint to:

Birth to Three Early Intervention
<http://www.dhss.delaware.gov/dms/epqc/birth3/directry.html>
Herman M. Holloway, Sr. Campus
1st Floor, Main Administration Building
1901 N. DuPont Highway
New Castle, DE 19720
Phone: (302) 255-9134
Fax: (302)255-4407

The Birth to Three Early Intervention System will offer to assist you in filing your complaint.

You will be told of the mediation process, which may be used prior to a due process hearing.

You will receive a response within seven (7) working days after the Birth to Three Office receives your request.

The response will notify you of your rights in the hearing process.

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

Hearing officers are appointed to conduct due process hearings. Hearing officers must:

1. Have knowledge about the provisions of Part C and the needs of, and services available for, eligible children and their families; and
2. Perform the following duties:
 - a. Listen to the presentation of relevant views about the complaint/disagreement, examine all information relevant to the issues, and seek to reach a timely resolution of the disagreement;
 - b. Provide a record of the proceedings including a written decision.

Under Child Development Watch, you are given the rights listed below in any impartial process hearing:

1. To be accompanied and advised by a lawyer (at your expense) and by individuals with special knowledge or training about early intervention services for children eligible under Part C;
2. To present evidence and confront, cross examine, and to compel the attendance of witnesses;
3. To prohibit the introduction of any evidence at the proceedings that has not been disclosed to you at least five calendar days before the proceeding;

4. To obtain a written or electronic verbatim (word by word) transcription of the proceeding; and
5. To obtain written findings of fact and decisions.

The impartial due process hearing described in this section must be carried out at a time and place that is reasonably convenient to you.

Any party who wants to contest the final decision of the formal hearing may bring a civil action in state court within thirty (30) calendar days of the decision, or in federal court where there is no time limit.

During the pendency (time period) of any proceeding involving a parent/provider disagreement (complaint), unless the early intervention provider agency or state partner agency otherwise agree, your child will continue to receive the appropriate early intervention services currently being provided.

If the disagreement (complaint) between you and the provider involves an application for initial services, your child must still be provided those services that are not in dispute.

Glossary

Early Intervention Services: As included in IDEA, the term 'early intervention services' means developmental services that--

- ``(A) are provided under public supervision;
- ``(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;
- ``(C) are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team, in any 1 or more of the following areas:
 - ``(i) physical development;
 - ``(ii) cognitive development;
 - ``(iii) communication development;
 - ``(iv) social or emotional development;or
 - ``(v) adaptive development;
- ``(D) meet the standards of the State in which the services are provided, including the requirements of this part;
- ``(E) include—
 - ``(i) family training, counseling, and home visits;
 - ``(ii) special instruction;
 - ``(iii) speech-language pathology and audiology services, and sign language and cued language services;
 - ``(iv) occupational therapy;
 - ``(v) physical therapy;
 - ``(vi) psychological services;
 - ``(vii) service coordination services;
 - ``(viii) medical services only for diagnostic or evaluation purposes;

- ``(ix) early identification, screening, and assessment services;
- ``(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;
- ``(xi) social work services;
- ``(xii) vision services;
- ``(xiii) assistive technology devices and assistive technology services; and
- ``(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;
- ``(F) are provided by qualified personnel, including—
 - ``(i) special educators;
 - ``(ii) speech-language pathologists and audiologists;
 - ``(iii) occupational therapists;
 - ``(iv) physical therapists;
 - ``(v) psychologists;
 - ``(vi) social workers;
 - ^(vii) nurses;
 - ``(viii) registered dietitians;
 - ``(ix) family therapists;
 - ``(x) vision specialists, including ophthalmologists and optometrists;
 - ``(xi) orientation and mobility specialists; and
 - ``(xii) pediatricians and other physicians;
- ``(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and
- ``(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

Educational Surrogate Parent: A trained volunteer appointed to represent certain children who are receiving or may be in need of early intervention services.

Evaluation: The process that determines whether or not a child qualifies for services.

Individualized Family Service Plan (IFSP): A written individualized family service plan developed by a multidisciplinary team that includes the parents, including a description of the appropriate transition services for the infant or toddler.



Parent: The term “parent” means a natural or adoptive parent, a foster parent, unless State law prohibits a foster parent from acting as a parent (see NOTE below), a guardian, a person acting as a parent of a child (such as grandparent or stepparent with whom the child lives, as well as persons legally responsible for the child’s welfare), or a surrogate who has been appointed under these procedures. This term does not include the State if the child is a ward of the State.

NOTE: Delaware Part C practice ensures that to be considered a “parent” under Part C of IDEA, foster care parents must receive training and must be appointed as an Educational Surrogate parent.

Record: Any document that contains information about your child or family.

Ward of the State: Ward of the State means a child who, as determined by the State where the child resides is:

1. A foster child;
2. A Ward of the State; or
3. In the custody of a public child welfare agency.

Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent as described above.

Additional Resources

Delaware Department of Education (DOE)

401 Federal Street, Suite 2

Dover, DE 19901

(302) 735-4000

<https://www.doe.k12.de.us/Page/2297>

Delaware Bar Association

<https://www.dsba.org>

405 N. King Street, Suite 100

Wilmington, DE 19801

302-658-5279

Fax 302-658-5212

Delaware Volunteer Legal Services

<https://www.dvls.org/>

New Castle County- [\(302\) 478-8850](tel:3024788850)

Kent/Sussex County- [\(888\) 225-0582](tel:8882250582)

Email- tventresca@dvls.org

Disabilities Law Program

<http://www.declasi.org/disabilities-law-program/>

New Castle County- (302) 575-0660

Kent County- (302) 674-8500

Sussex County- (302) 856-0038

Governor's Advisory Council for Exceptional Citizens

<https://gacec.delaware.gov>

(302) 739-4553

Interagency Coordinating Council (ICC)

(302) 255-9134

Parent Information Center of Delaware, Inc. (PIC)

<http://www.picofdel.org/contact-us.html>

(302) 999-7394

Toll free: 1-888-547-4412