

Families Have Rights

District of Columbia IDEA Part C Procedural Safeguards for Families



Federal and District of Columbia law require procedural safeguards to protect parent rights regarding early intervention. The federal laws for Early Intervention are:

Individuals with Disabilities Education Act of 2004 (IDEA)

and

Family Education Rights and Privacy Act (FERPA).

This booklet reviews the family rights that govern the early intervention process for infants, toddlers and their families in the District of Columbia's Early Intervention Program.

The Office of the State Superintendent of Education is the lead agency that certifies programs to provide early intervention services.

District of Columbia

Office of the State Superintendent of Education (OSSE)
Department of Special Education (DSE)
District of Columbia Early Intervention Program (DC EIP)

Part C (Birth to 3rd Birthday) **Early Intervention Program**

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INTRODUCTION

From the time you are referred to the DC Early Intervention Program (DC EIP) until you leave the program, you are a part of your child's team. As a member of this team, it is important for you to know your family's rights as defined by Part C of the IDEA and its implementing regulations [34 CFR 303.400- 303.460]. As a Parent/Guardian, you have the following safeguards:

- A multidisciplinary evaluation to determine eligibility;
- An Individualized Family Service Plan (IFSP) within forty-five (45) calendar days from referral for evaluation, if your child is found eligible for Part C;
- The receipt of appropriate early intervention services for your child and family as addressed in your child's IFSP;
- The opportunity to receive evaluation/assessment, IFSP development, service coordination, and procedural safeguards at no cost. You may, however, be charged for other early intervention services based on your ability to pay as determined by your cost participation application;
- The right to refuse evaluations, assessments, and services;
- The right to maintenance of the confidentiality of personally – identifiable information in your child's records;
- The right to be invited to and participate in all meetings in which a decision is expected to be made regarding a proposal to change the identification, evaluation, or placement of your child, or the provision of services to your child or family;
- The right to receive written timely 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 opportunity to receive each early intervention service in natural environments to the extent appropriate to meet your child's developmental needs;
- The right to review and, if appropriate, correct records;
- The right to request mediation and/or impartial due process procedures to resolve disputes between you and DC EIP or service providers, regarding eligibility, proposals or refusals 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; and
- The opportunity to file a state complaint, alleging that any public agency or private service provider is violating a requirement of Part C.

SECTION 1: RIGHT TO UNDERSTAND AND BE INFORMED

RIGHT TO NATIVE LANGUAGE (34 CFR 303.401, 403)

It is important to understand what early intervention services are and how they work. The Early Intervention Program is responsible for giving you written information before proposing, changing, or refusing to provide any early intervention services, such as completing an evaluation or having an Individualized Family Service Plan (IFSP) meeting. You have the right to receive early intervention information in a way that you can understand. Notices must be written in a way that it is understandable to the general public. If English is not your primary language, you have the right to receive information in your primary language (unless it is clearly impossible to do so). If you use another method of communication, such as sign language or Braille, you have the right to receive information in that way.

34 CFR 303.401 Definition of Native Language

(b) Native Language, where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part.

RIGHT TO WRITTEN PRIOR NOTICE (34 CFR 303.403)

You have the right to have the prior written notice explained to you, so that you can understand it better. You must receive prior written notice within a reasonable amount of time before the early intervention staff or service providers propose or refuse to initiate or change the identification, evaluation, or placement of your child, or the provision of appropriate early intervention services to your child or family. This notice must inform you about:

- (a) The action being proposed or refused,
- (b) The reason for taking the action, and
- (c) Procedural Safeguards, including State Complaint Procedures.

RIGHT TO INFORMED PARENTAL CONSENT (34 CFR 303.401, 404)

Early Intervention services are voluntary. Your consent or permission must be obtained in writing before an evaluation or assessment is conducted. Your consent must also be given before early intervention services can begin or end. You can choose not to give consent for a particular service, evaluation or assessment without affecting other early intervention services. You can also change your mind at any time about accepting a service, evaluation or assessment without affecting other early intervention services. If you do not consent, the Early Intervention Program staff and providers shall make reasonable efforts to ensure that you:

- (a) Understand the nature of the evaluation, assessment or services that would be available; and
- (b) Understand that your child will not be able to receive the evaluation, assessment or services, unless you give consent.

34 CFR 303.401 Definition of Consent

(a) Consent means that—(1) The parent has been fully informed of all information relevant to the activity for which consent is sought...(2)The parent understands and agrees in writing to the carrying out of activities...and; (3) The parent understands that granting consent is voluntary on the part of the parent and may be revoked at

RIGHT TO DECLINE SERVICES (34 CFR 303.405)

As the parent of a child eligible under Part C, you may determine whether your child and family will accept or refuse any of the recommended early intervention service(s). You may also refuse services after first accepting them without jeopardizing other early intervention services you chose to accept or continue.

SECTION 2: RIGHT TO SERVICES

RIGHT TO AN EVALUATION AND ASSESSMENT (34 CFR 303.322)

Every infant and toddler from birth through age two (until the third birthday) who is referred for evaluation has the right to a timely, comprehensive, multidisciplinary evaluation. You have the right to identify and express the needs of your family to appropriately assist in the development of your child. Eligibility for early intervention is determined after the evaluation. The evaluation must be done by a multidisciplinary team of two or more qualified specialists who will examine your child's medical history, development, and current strengths and challenges. If your child is eligible, he or she will be referred for early intervention services and have an Individualized Family Services Plan (IFSP) developed with your input. If your child is determined to be not eligible for services, you have the right to disagree and challenge that decision.

The IFSP must include (34 CFR 303.344):

- Major outcomes targeted for your child
- How progress will be measured
- What and where services will be provided
- When services will begin and how services will be

34 CFR 303.322 Evaluation and Assessment

(b)(1) Evaluation means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part. (b)(2) Assessment means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility.

RIGHT TO A COORDINATED PLAN (34 CFR 303.340)

If your child is found eligible for services, a written plan called the **Individualized Family Service Plan (IFSP)** should be created for your family within **forty-five (45) days** of your referral for evaluation. The IFSP should include information about your family's resources, priorities, and concerns for your child, if you choose to provide such information. An IFSP meeting must be held every **six (6) months**, with a full assessment at least once every year. Services listed on the IFSP should be provided to the child within **thirty (30) days** of parental/guardian signature on the IFSP. You and your family have the right to request a meeting with the IFSP team at anytime to review progress.

RIGHT TO SERVICE COORDINATION (34 CFR 303.23)

Your service coordinator will assist your child and family in receiving the rights, procedural safeguards and services that are authorized to be provided by the Part C early intervention program.

34 CFR 303.23 Service Coordination

Service Coordination activities are the activities carried out by a service coordinator to assist and enable a child eligible under this part and the child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State's early intervention program.

RIGHT TO A SMOOTH AND COORDINATED TRANSITION (34 CFR 303.148)

Part C early intervention services will end when your child turns three (3) years old. Transition planning will start when your child is two (2) years old or at entry into the early intervention program if your child joins the program after the age of two (2) years old. Transition must be completed by the time your child is three (3) years old. The transition IFSP should include plans for transition to another early childhood program that meets your child's needs. With your permission, the Part C early intervention program will invite the Part B local educational agency to your transition meeting for a discussion about what you can expect when your child turns three (3) years old and what options are available to you and your child. The steps to support the transition of your child from Part C will be discussed with you at IFSP meetings and documented in the IFSP.

34 CFR 303.344 Content of an IFSP

The steps required ... include, with parental consent, the transmission of information about the child to the local educational agency, to ensure continuity of services, including evaluation and assessment information required in 303.322, and copies of IFSPs that have been developed and implemented in accordance with 303.340 through 303.346.

RIGHT TO A SURROGATE PARENT (34 CFR 303.406)

The rights of children eligible for Part C early intervention services are protected if:

- No parent, as defined by 34 CFR 303.19, can be identified;
- The service coordinator, after reasonable efforts, cannot discover the whereabouts of a parent; or
- The child is a ward of the District of Columbia.

An individual will be assigned to act as a “surrogate” for the parent according to the procedures that follow. The following criteria are employed when selecting surrogates:

- Surrogate parents are selected as authorized by District of Columbia law.
- A person selected as a surrogate parent:
 - (1) Has no interest that conflicts with the interest of the child he or she represents;
 - (2) Has knowledge and skills that ensure adequate representation of the child;
 - (3) Is not an employee of any state (including the District of Columbia) agency, or a person or an employee of a person providing early intervention services to the child or to any family member of the child; and
- Resides in the same general geographic areas as the child, whenever possible.

A surrogate parent may represent the child in all matters relating to the evaluation and assessment of the child, the development and implementation of the child’s IFSPs, including annual evaluations and periodic reviews; and the ongoing provision of early intervention services to the child.

RIGHT TO CONFIDENTIALITY (34 CFR 303.460)

The Early Intervention Program will keep a record that includes your child's IFSP, progress notes, and other information that helps to develop an IFSP. A federal law known as the **Family Educational Rights and Privacy Act (FERPA)** protects this information. Your child's records cannot be disclosed without your prior written consent (permission) unless authorized under FERPA (34 CFR 99.30-31). When parental consent is required under IDEA and/or FERPA, you do not have to give your permission, and refusing will not affect your child's right to early intervention services.

34 CFR 303.460 Confidentiality of Information

Each State, including the District of Columbia, shall adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part, including the rights of parents to written notice of a written consent to the exchange of this information among agencies consistent with Federal and State law.

In compliance with federal and District of Columbia law, personally identifiable information is only shared within the Part C Program. In some instances, personally identifiable information can be released without your consent and sometimes even without providing you notice. For example, disclosures required to report a crime to law enforcement or judicial authorities or disclosures necessary for health and safety emergencies do not require notice to, or consent from, you. Also, disclosures in response to a subpoena (which is a written command to provide documents or witnesses) requires notice to you prior to disclosing personally identifiable information. Personally identifiable information can be disclosed to officials of participating agencies collecting or using the information under Part C in compliance with federal or state laws. An educational agency or institution subject to the regulations of the Family Educational Rights and Privacy Act (FERPA) may not release information from educational records to other participating agencies without your consent unless authorized to do so under FERPA (34 CFR, Part 99).

Additionally, your child may be eligible to receive special education and related services under Part B of the IDEA when he or she turns three (3) years old. If your child continues to receive early intervention services at the age of transition from Part C to Part B, your child's name, date of birth, your contact information, and the language spoken by your family will be shared with those agencies that are responsible for ensuring a smooth transition from Part C to Part B.

Personally Identifiable Information(34 CFR 303.401 (c)):

- Name of your child
- Your name or other family member names
- The address of your child
- A personal identifier like your child's or your social security number.
- A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty
- How progress will be measured
- What and where services will be provided
- When services will begin and how services will be paid for.

RIGHT TO REVIEW/AMEND RECORDS (34 CFR 303.402, 300.501, 618)

You have the right to inspect and review records relating to evaluations and assessments, eligibility determinations, the development and implementation of IFSPs, individual complaints regarding your child, and any other areas under this part concerning your child and family. In addition, you have the right to request a list of the types and locations of education records collected, maintained, or used by OSSE. (34 CFR §300.616).

As the parent/guardian, you or someone you choose can see your child's record and have it explained. If there is information in the record which you: 1) do not agree with, 2) believe is not accurate, or 3) feel violates your child's privacy, you can ask to have it changed or removed. If the program does not agree with you, it must notify you in writing within 30 days regarding the reason they do not agree and explain your right to ask for a hearing. If you ask to see your child's record, the program must comply with your request without unnecessary delay, and before any meeting regarding an IFSP or hearing, and in no case more than forty-five (45) days after the request has been made. If any education 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. (34 CFR §300.615).

Destruction of Documents

The physical destruction of, or removal of personal identifiers from, information so that it is no longer personally identifiable.
(Permanent records of your child's name, address, phone number, attendance and year completed may be maintained without time limitation)

When the early intervention program decides that your child's/ family's personal identifiable information collected, maintained, or used by the Part C program is no longer needed to provide services to your child: (a) you must be informed, and (b) at your request, the information must be destroyed (34 CFR 300.624).

SECTION 4: RIGHT TO DISAGREE

If you find that you have a concern or a question, please bring it to the attention of the DC Early Intervention Program right away. Sometimes parents and the early intervention staff have different ideas about a child's early intervention experience. Please share your ideas and/or concerns with the other members of your IFSP team, your service coordinator, or the program manager of the early intervention program. Talking openly can address most concerns.

Impartial Due Process

The person appointed to implement or resolve the complaint resolution process:

- (a) is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and
- (b) does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

You have the right to disagree about any action proposed, taken or refused by the early intervention program or provider to start or change the identification, evaluation, or placement of your child, and or the provision of appropriate early intervention services to your child and family.

If you disagree, the law provides you a timely resolution of the disagreement by one of these methods:

- File a formal complaint with the Office of the State Superintendent of Education
- Request a mediation, or
- Request an impartial due process hearing.

Also, you are always encouraged to speak with your provider(s) and/or early intervention staff to discuss concerns or disagreements.

RIGHT TO MEDIATION (34 CFR 303.419/420, 300.506)

Mediation is a voluntary, informal process that can help resolve disagreements between parents and an early intervention program. You or an early intervention program representative may ask for mediation when there are different opinions or views about your child’s early intervention experience. You and early intervention staff meet **with an impartial person (the mediator)**, who is trained in mediation and special education. The mediator does not take sides or make decisions about the disagreement. The mediator is there to work with you and the early intervention program to talk about the issues, develop new ideas, and help both sides work together to resolve the dispute. Mediation may result in a written agreement between both sides.

34 CFR 303.419 Mediation

(b) REQUIREMENTS: (1) The State must ensure that the mediation process is:

- (i) voluntary on the part of the parties;
- (ii) not used to deny or delay a parent’s right to a due process hearing under 303.420, or to deny any other rights afforded under Part C of the Act; and
- (iii) conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

Mediation is **confidential**. The discussion that happens during the mediation meeting may not be used as evidence in a due process hearing or civil proceeding. Mediation is free, and the mediator will schedule the mediation within 14 calendar days at a time and location convenient to both you and the early intervention program. Mediation will not delay your right to due process hearing or the hearing timelines.

You have the rights listed below in any due process hearing carried out under Part C early intervention:

- (1) To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to 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 proceeding that has not been disclosed;**
- (4) To obtain a written or electronic verbatim (word by word) transcription of the proceedings; and**
- (5) To obtain written findings of facts and decisions.**

RIGHT TO DUE PROCESS HEARING (34 CFR 303.420-425)

A **due process hearing** is a **formal process** where an **impartial person (a hearing officer)** makes a decision about a disagreement. You may ask for a hearing if you disagree with the program about your child's eligibility, evaluation, types or amount of services offered or if there is something in your child's record that you believe is inaccurate, misleading or in some way violates the privacy of the child or family. The hearing officer will make a decision based on the testimony of witnesses and evidence. You have the right to have an attorney or advocate present at the hearing. Any proceeding for implementing the complaint resolution process must be carried out at a time and place that is reasonably convenient to the parent. (34 CFR 303.423(a)). During the pendency of any proceeding involving a due process

complaint, the child must continue to receive the appropriate early intervention services currently being provided unless OSSE and parents of the child agree otherwise. Furthermore, if the complaint involves an application for initial services, the child must receive those services that are not in dispute. (34 CFR 303.425). Any decision made in a hearing is final unless you, the early intervention staff, or the provider(s) bring a civil action in State or Federal court under Section 639(a)(1) of IDEA. (34 CFR 303.424)

RIGHT TO FILE ADMINISTRATIVE COMPLAINTS (34 CFR 303.510-512)

Any individual (including a parent) or organization may file a complaint regarding any violation of a Part C requirement by a public agency or private service provider. For example, a parent may file a complaint if an early intervention program is not providing services listed in the IFSP, if changes in services were made without informed consent, if a program did not meet timelines; or if notices, consents, or releases were not provided. A complaint must be filed within one year of when the alleged violation happened; however, this may be extended for certain reasons. If you decide to file a formal complaint with OSSE, OSSE has sixty (60) calendar days to:

- Complete an independent on-site investigation, if OSSE determines that such an investigation is necessary;
- Allow you the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- Review all relevant information and make an independent determination as to whether the early intervention program is violating a requirement of Part C of the IDEA, and
- Issue a written decision to the person who filed the complaint that addresses each allegation in the complaint and also contains:
 - Findings of fact and conclusion and
 - The reasons for the final decision

If a written complaint is received that is also the subject of a due process hearing or contains multiple issues of which one or more are part of that hearing, the state will

set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. Any issue in the complaint, however, that is not part of the due process action must be resolved within the 60 calendar day timeline. If an issue is raised in a filed complaint has previously been decided in a due process hearing involving the same parties, then 1) the hearing decision is binding and 2) OSSE must inform the complainant to that effect.

TO FIND OUT MORE ABOUT YOUR RIGHTS YOU MAY CONTACT:

- **Your service coordinator**

Name: _____

Contact Number: _____

- **The person providing early intervention services to your child, and/or**

SERVICE TYPE	NAME	CONTACT NUMBER

- **Early intervention staff**

- Child Find Hotline: 202-727-3665

IMPORTANT CONTACT INFORMATION

To contact the District of Columbia Early Intervention Program (DC EIP) contact:

DC Early Intervention Program
Office of the State Superintendent of
Education
810 First Street, NE, 5th Floor
Washington DC 20002
202-727-3665 (Main Number)
202-724-7230 (Fax)

To request mediation or information about mediation contact:

Office of the State Superintendent of
Education
Student Hearing Office
810 First Street, NE, 2nd Floor
Washington DC 20002
(202) 698-3819 (Phone)
202-478-2956 (Fax)

To file a formal complaint contact:

Melanie Byrd, Director,
Monitoring and Compliance
Division of Special Education
Office of the State Superintendent of
Education
810 First Street, NE, 5th Floor
Washington DC 20002
osse.ideastatecomplaints@dc.gov

To request a due process hearing or information about legal and other services contact:

Office of the State Superintendent of
Education
Student Hearing Office
810 First Street, NE, 2nd Floor
Washington, DC 20002
202-698-3819 (Phone)
202-478-2956(Fax)

Find more information regarding the DC EIP Program, related policies and procedures, and your administrative rights as a parent at www.osse.dc.gov under the “special education” link.