

Massachusetts Early Intervention and You.

Your Notice of Family Rights and Procedural Safeguards

As a parent, you are your child's most important teacher.

From the time you are referred to Early Intervention until you leave the program, you are part of your child's team along with Early Intervention staff. As a member of the team, you offer information that helps others understand what is important to your family and what you would like to see for your child. Early Intervention staff offer their training and experience to provide activities to support your child's development.

Together, Early Intervention staff, parents and other people you choose make up the Individualized Family Service Plan (IFSP) team. The IFSP team decides on the supports, services and activities that will meet the outcomes (goals) you have for your child.

Parents are equal members of the IFSP team. Every child and family who receives Early Intervention has rights and safeguards (called "procedural safeguards") that protect his/her interests. Procedural safeguards are important because they make certain families have complete information, have their privacy protected and are asked permission before any activities or services take place. Having information that is complete and understandable helps families make decisions about how they receive services.

Federal law and the Massachusetts Department of Public Health require procedural safeguards and parent rights in Early Intervention. The federal laws for Early Intervention are the Individuals with Disabilities Education Improvement Act of 2004 (known as "IDEA") and the Family Education Rights and Privacy Act ("FERPA"). The Massachusetts Department of Public Health is the state agency that certifies programs to provide Early Intervention services.

There are steps the Early Intervention program must take while you receive service. These include explaining your rights, giving you information in a way you understand, and respecting you as a parent by asking for your permission in writing.

This notice is about your family rights and procedural safeguards. You will receive this notice at least once a year. Please take a few minutes to read it. The staff at Early Intervention is happy to answer any questions. If you have questions the Early Intervention team cannot answer, you can contact Mary Colorusso, Office of Family Rights and Due Process at 1-978-851-7261 (Tewksbury) or mary.dennehy-colorusso@state.ma.us.



The **Massachusetts Early Intervention Operational Standards and Procedural Safeguards and Due Process Standards** are found at <http://www.eiopl.org/familyrights.html> ,

by calling Mary Colorusso at (978) 851-7261, TTY: (978) 851-0829 or
The Massachusetts Department of Public Health

Early Intervention Services

250 Washington Street

Boston, MA 02108

617-624-5070

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Massachusetts Family Rights and Early Intervention Services

Being Informed – *Prior Written Notice/Native Language*

It is important to understand what Early Intervention (EI) services are and how they work. Having information in writing is one way families can make informed decisions about Early Intervention services. EI programs must give you written information, before proposing, changing, or refusing to provide any early intervention service (for example, completing an evaluation, changing a service, or having an IFSP meeting). The written information must include the reason for the proposed activity and be in your native language or a way you understand (using a translator, Braille, sign language, or explaining the notice, if you prefer) unless clearly not feasible to do so.

Giving Permission - Parent Consent

Early Intervention services are voluntary. The program must ask for your written permission (consent) to make sure you agree to the activity. The program needs to answer any questions you have and explain what will happen if you do not give consent. Parents may give or refuse consent for any EI service, to have their health insurance pay for services or to release information from their child's record. A parent may choose to consent to some services and not consent to others. Only the services you give consent to will be provided. Parents also have the right to withdraw their consent after they have provided it.

Privacy and Your Child's Record – *Confidentiality*

The EI program will keep a record that includes the Individualized Family Service Plan (IFSP), progress notes, and other information that helps to develop an IFSP. A federal law known as the Family Education Rights and Privacy Act ("FERPA") protects this information. The information is confidential (private) with some exceptions that are allowed by state or federal law. Some of these exceptions include releasing limited information to:

- Your school system if your child could be eligible for special education services at age three. The program may release your name, your child's name, date of birth, and address. You can choose not to have this information released. The program must ask for your written permission (consent) to release any other information from your child's record.
- Other Department of Public Health (DPH) programs if there is a public health emergency (such as an outbreak of a contagious disease) or to investigate public health related issues.
- The Department of Social Services (DSS) to file a report of suspected abuse or neglect and during the 10-day investigation period.
- Staff from DPH or the Federal Department of Education staff who monitor and fund EI services.
- Comply with a lawfully issued court order. The program will attempt to contact you before the information is released.

The Department of Public Health collects information about children who receive EI services. The information shows children are eligible, arranges for payment and provides a way for DPH to evaluate and coordinate services. The information is transmitted and stored electronically using many security features to protect your privacy. Only a very limited number of DPH staff is allowed to see the information. Information that does not identify you or your child personally may be used in reports to the state legislature and the Federal Department of Education to fund and monitor the program. You may ask to see a list of the DPH staff who works with this information.

From time to time, especially when you develop or review your IFSP, the EI program may ask to review information from other service providers (for example, your child's pediatrician or other medical specialists). The EI program must ask for your written permission (consent) to release or receive information about your child or family.

Timelines, Procedures and Standards –

EI programs must follow timelines and steps while you are in the program. There are timelines to develop and review an IFSP, provide services, and when your child leaves EI. These timelines and steps are in the in the Early Intervention Operational Standards. See the link on the front page or call DPH for a copy. Parents have the right to have services on their IFSP provided in a timely manner (within 30 days of giving consent on an IFSP).

Paying for Services – Mass Health and most private insurance pay for EI services. DPH pays for anything not covered by insurance (co-payments and deductibles) and for children who do not have insurance. The program will ask for your consent to have your insurance pay for services. Some families are assessed a fee when IFSP services begin. The fee is determined when the first IFSP is written and every year after that. The amount of the fee is based on your family size and income. There is an application to fill out if you cannot afford the fee. No family will be denied service if they are unable to pay the fee. Service coordination, procedural safeguards, evaluation/assessments, IFSP development and reviews are provided at no out of pocket cost for families. IFSP services, including home visits, child group, center visits, etc, are subject to the fee.

Reviewing Your Child's Record – *Examining Records*

As long as both parents have legal custody of their child, both parents have the right to see what is in their child's record even if the parents are separated, divorced or not married. Parents who have legal custody may see what is in their child's record unless there is a court order, custody agreement or other legal document that does not allow a parent to see what is in their child's record or make decisions about their child's EI services.

You, or someone you choose, can see your child's record and have it explained. EI programs may charge a reasonable fee to copy records unless the cost prevents a family from seeing their child's record. If there is information in the record you do not agree with, believe is not accurate or violates your child's privacy, you can ask to have it changed or removed. If the program does not agree with you, they must notify you in writing within 30 days why they do not agree and explain your right to ask for a hearing. If you ask for a hearing, a hearing officer, will make a written decision about the disagreement within 60 calendar days. You may also include your own statement about the information and have it included in your child's record. The program must send out your statement with the part of the record you do not agree with if you give consent to release the information from your child's record.

If you ask to see your child's record, the program must, within 5 days give you a list, of the records they have and where they are. The program must let you to see your child's record within 10 days of your request (5 days if the request is for an IFSP meeting or a due process hearing). EI programs must keep a record of anyone outside the program who has looked at your child's record including the name of the person, the date, and the reason or purpose for the review. The program will also keep a list of all records that were released and who they were released to.

Each program must keep a list of staff that has access to your information. These staff must receive training about the confidentiality regulations of the Individuals with Disabilities Education Act (IDEA) and Family Education Rights and Privacy Act (FERPA).

When You Disagree or Have a Complaint – *Dispute Resolution, Mediation, Due Process Hearing*

If you find that you have a concern or a question, please bring it to your EI program right away. Sometimes, parents and the EI staff have different ideas about a child's early intervention experience. Talk with the other members of your IFSP team, your service coordinator or the director of the EI program. Parents can ask to have an IFSP meeting at any time to review the IFSP; talk about what is working well or what may need to change. Talking openly can solve most disagreements.

If you have a complaint about your EI services or program, there are ways to have your concerns handled. If you would like more information on your family rights, please call Mary Colorusso at 978-851-7261. There are different ways a parent may have their concerns addressed outside of the EI program. A parent may use one or more of these options if their concern cannot be worked out with the EI program.

Filing a Complaint: A parent, person or an organization may file a complaint if they believe the program has violated a child or family's rights. 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.

A complaint may be filed against an EI program, a Specialty Service Provider who provides EI services or DPH. The complaint must be in writing, signed, and sent to DPH. DPH investigates all complaints of alleged violation(s) of the IDEA. A report is sent to the person or organization who filed the complaint and the program within 60 calendar days from when it DPH receives the written complaint unless there are reasons to extend the timeline. The report includes DPH's reasons and conclusions about each alleged violation(s).

If a parent files a complaint and asks for a due process hearing at the same time, DPH can only investigate any issue(s) that are not part of the due process hearing. A hearing officer will decide the issue(s) that are part of the due process hearing. The issue cannot be part of a future complaint filed by the same parent. DPH will send a report to the person who filed the complaint within 60 calendar days.

Mediation: Mediation is a voluntary, informal process that can help solve disagreements between parents and an Early Intervention program. Parents or an EI program may ask for mediation when there are different opinions or views about the child's early intervention experience. Parents and Early Intervention staff meet with an impartial person, (the mediator), who is trained in mediation and special education. The mediator does not work for any agency or program that provides EI services. The mediator does not take sides or makes a decision about the disagreement. The mediator will work with parents and the EI program to talk about the issue, develop new ideas and help both sides create their own agreements. If there is agreement on an issue, it is written in a mediation agreement. Parents and the EI program receive a copy. If there is no agreement, the two sides can continue to try to work together or ask for a due process hearing.

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. DPH will provide the mediator. The mediator will schedule the mediation within 14 calendar days at a time and location convenient to both parents and the EI program.

A request for mediation needs to be made in writing to the Department. Any services that a parent provided consent to on an IFSP will be provided during this time. Mediation will not delay a parent's right to a due process hearing or the hearing timelines.

Due Process Hearing: A due process hearing is a formal process where an impartial person (a hearing officer) makes a decision about a disagreement. DPH provides the hearing officer free of charge. A parent may ask for a hearing if they disagree with the program about their child's eligibility, evaluation, types or amount of services offered or if there is something in their child's record a parent believes 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. Parents have the right to have an attorney, advocate or anyone else at the hearing. DPH will provide parents with a list of free or low-cost advocates and attorneys.

Any services that were agreed to in writing will be provided during the hearing process. The hearing officer will send a written decision within 30 calendar days from when DPH receives the written request for a hearing. If you do not agree with the hearing officer's decision, you may appeal your decision in state or federal court.

If you have questions about your rights the Early Intervention team cannot answer, you can call Mary Colorusso, Director, Office of Family Rights and Due Process at 1-978-851-7261 or mary.dennehy-colorusso@state.ma.us

The following are the Procedural Safeguards of the Individuals with Disabilities Education Act

34 CFR 303.401 Definitions of consent, native language, and personally identifiable information.

As used in this subpart— (a) *Consent* means that— (1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;

(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;

(c) *Personally identifiable* means that information includes— (1) The name of the child, the child’s parent, or other family member; (2) The address of the child; (3) A personal identifier, such as the child’s or parent’s social security number; or (4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

§ 303.402 Opportunity to examine records.

In accordance with the confidentiality procedures in the regulations under part B of the Act (34 CFR 300.560 through 300.576), the parents of a child eligible under this part 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 the child, and any other area under this part involving records about the child and the child’s family.

§ 303.403 Prior notice; native language.

(a) *General*. Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, 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.

(b) *Content of notice*. The notice must be in sufficient detail to inform the parents 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 §§ 303.401–303.460 of this part; and (4) The State complaint procedures under §§ 303.510–303.512, including a description of how to file a complaint and the timelines under those procedures.

(c) *Native language*. (1) The notice must be (i) Written in language understandable to the general public; and (ii) Provided in the native language of the parents, unless it is clearly not feasible to do so. (2) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that (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. (3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille, or oral communication).

§ 303.404 Parent consent.

(a) Written parental consent must be obtained before (1) Conducting the initial evaluation and assessment of a child under § 303.322; and (2) Initiating the provision of early intervention services (see § 303.342(e)). (b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent (1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and (2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

§ 303.405 Parent right to decline service.

The parents of a child eligible under this part may determine whether they, their child, or other family members will accept or decline any early intervention service under this part in accordance with State law, and may decline such a service after first accepting it, without jeopardizing other early intervention services under this part.

§ 303.406 Surrogate parents. (a) *General*. Each lead agency shall ensure that the rights of children eligible under this part are protected if (1) No parent (as defined in § 303.18) can be identified; (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or (3) The child is a ward of the State under the laws of that State.

(b) *Duty of lead agency and other public agencies*. The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include a method for (1) Determining whether a child needs a surrogate parent; and (2) Assigning a surrogate parent to the child.

(c) *Criteria for selecting surrogates*. (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law. (2) Public agencies shall ensure that a person selected as a surrogate parent (i) Has no interest that conflicts with the interests of the child he or she represents; and (ii) Has knowledge and skills that ensure adequate representation of the child.

(d) *Non-employee requirement; compensation*.

(1) A person assigned as a surrogate parent may not be (i) An employee of any State agency; or (ii) A person or an employee of a person providing early intervention services to the child or to any family member of the child. (2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent. (e) *Responsibilities*. A surrogate parent may represent a child in all matters related 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 this part.

§ 303.419 Mediation.

(a) *General*. Each State shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in § 303.403(a) to resolve the disputes through a mediation process which, at a minimum, must be available whenever a hearing is requested under § 303.420. The lead agency may either use the mediation system established under Part B of the Act or establish its own system.

(b) *Requirements*. The procedures must meet the following requirements: (1) The procedures must ensure that the mediation process (i) Is voluntary on the part of the parties; (ii) Is 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) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. (2) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. (3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (c) of this section. (4) 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. (5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement. (6) 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, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(c) *Meeting to encourage mediation*. A State may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party (1) Who is under contract with a parent training and information center or community parent resource center in the State established under sections 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and (2) Who would explain the benefits of the mediation process and encourage the parents to use the process.

§ 303.420 Due process procedures.

Each system must include written procedures including procedures for mediation as described in § 303.419, for the timely administrative resolution of individual child complaints by parents concerning any of the matters in § 303.403(a). A State may meet this requirement by (a) Adopting the mediation and due process procedures in 34 CFR 300.506 through 300.512 and developing procedures that meet the requirements of § 303.425; or (b) Developing procedures that (1) Meet the requirements in § 303.419 and §§ 303.421 through 303.425; and (2) Provide parents a means of filing a complaint.

§ 303.421 Appointment of an impartial person.

(a) *Qualifications and duties.* An impartial person must be appointed to implement the complaint resolution process in this subpart. The person must (1) Have knowledge about the provisions of this part and the needs of, and services available for, eligible children and their families; and (2) Perform the following duties: (i) Listen to the presentation of relevant View points about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint. (ii) Provide a record of the proceedings, including a written decision. (b) *Definition of impartial.* (1) As used in this section, *impartial* means that the person appointed to implement the complaint resolution process (i) Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and (ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process. (2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

§ 303.422 Parent rights in administrative proceedings.

(a) *General.* Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under § 303.420. (b) *Rights.* Any parent involved in an administrative proceeding has the right to (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part; (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; (3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding; (4) Obtain a written or electronic verbatim transcription of the proceeding; and (5) Obtain written findings of fact and decisions.

§ 303.423 Convenience of proceedings; timelines.

(a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents. (b) Each lead agency shall ensure that, not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties.

§ 303.424 Civil action.

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.

§ 303.425 Status of a child during proceedings.

(a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

§ 303.460 Confidentiality of information.

(a) Each State 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 right of parents to written notice of and written consent to the exchange of this information among agencies consistent with Federal and State law. (b) These policies and procedures must meet the requirements in 34 CFR 300.560 through 300.576, with the modifications specified in § 303.5(b).

§ 303.510 Adopting complaint procedures.

(a) *General.* Each lead agency shall adopt written procedures for—

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that any public agency or private service provider is violating a requirement of Part C of the Act or this Part by (i) Providing for the filing of a complaint with the lead agency; and (ii) At the lead agency's discretion, providing for the filing of a complaint with a public agency and the right to have the lead agency review the public agency's decision on the complaint; and (2) Widely disseminating to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under §§ 303.510–303.512. (b) *Remedies for denial of appropriate services.* In resolving a complaint in which it finds a failure to provide appropriate services, a lead agency, pursuant to its general supervisory authority under Part C of the Act, 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.

§ 303.511 An organization or individual may file a complaint.

(a) *General.* An individual or organization may file a written signed complaint under § 303.510. The complaint must include (1) A statement that the State has violated a requirement of part C of the Act or the regulations in this part; and (2) The facts on which the complaint is based. (b) *Limitations.* The alleged violation must have occurred not more than one year before the date that the complaint is received by the public agency unless a longer period is reasonable because (1) The alleged violation continues for that child or other children; or (2) The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.

§ 303.512 Minimum State complaint procedures.

(a) *Time limit, minimum procedures.* Each lead agency shall include in its complaint procedures a time limit of 60 calendar days after a complaint is filed under § 303.510(a) to (1) Carry out an independent on-site investigation, if the lead agency determines that such an investigation is necessary; (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; (3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part C of the Act or of this Part; and (4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains (i) Findings of fact and conclusions; and (ii) The reasons for the lead agency's final decision. (b) *Time extension; final decisions; implementation.* The lead agency's procedures described in paragraph (a) of this section also must (1) Permit an extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint; and (2) Include procedures for effective implementation of the lead agency's final decision, if needed, including (i) Technical assistance activities; (ii) Negotiations; and (iii) Corrective actions to achieve compliance. (c) *Complaints filed under this section, and due process hearings under § 303.420.* (1) If a written complaint is received that is also the subject of a due process hearing under § 303.420, or contains multiple issues, of which one or more are part of that hearing, the State 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 within the 60-calendar-day timeline using the complaint procedures described in paragraphs (a) and (b) of this section. (2) 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 (i) The hearing decision is binding; and (ii) The lead agency must inform the complainant to that effect. (3) A complaint alleging a public agency's or private service provider's failure to implement a due process decision must be resolved by the lead agency.