
**FAMILY RIGHTS IN
NEW JERSEY'S
EARLY INTERVENTION
SYSTEM**

**A NOTICE
OF
INFANT/TODDLER
AND
FAMILY RIGHTS UNDER
PART C
OF
THE INDIVIDUALS WITH DISABILITIES
EDUCATION ACT
(IDEA)**

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FOREWORD

A Notice of Infant/Toddler and Family Rights Under the Part C Program for Early Intervention Services describes your child's and family's rights, as defined by Part C of the Individuals with Disabilities Education Act (IDEA). IDEA is a federal law which includes provisions for early intervention services for eligible children starting at birth. These provisions are described in federal regulations. To support the implementation of these federal requirements, New Jersey enacted compatible legislation P.L.1993, Chapter 309. New Jersey has developed and is implementing policies and procedures which meet these federal and state Part C requirements.

Because this document is an official notice of your rights under federal law and regulations, some terms may be unfamiliar to you. For this reason, some words are defined where they are used in the document and others are defined in the glossary in the back of this booklet.

The service coordinator working with your family can suggest additional materials to help you understand your rights. He/she can also suggest ways that you and other family members can be partners with professionals to help meet the developmental needs of your child.

INTRODUCTION

The Part C system in New Jersey is designed to maximize family involvement and ensure parental consent in each step of the process from the determination of eligibility through service delivery. Safeguards or rights have been established to protect parents and children. These rights are provided for parents through 3 pieces of Federal legislation. These laws include 34 C.F.R. 303.400-460 (Part C Procedural Safeguards under IDEA), 34 C.F.R. 300.560-576 (Part B Confidentiality under IDEA), and the Family Educational Rights and Privacy Act (FERPA). Parents must be informed about these rights or safeguards so they can have a leadership role in services to their children. Participation in the Part C early intervention system for infants and toddlers is voluntary for you and your family.

Under Part C in New Jersey, you, as a parent, have the following rights and safeguards:

The right for your child and family to have a multidisciplinary evaluation and assessment and the development of an Individualized Family Service Plan (IFSP) within forty-five (45) calendar days from referral for evaluation;

If eligible under Part C, the right to appropriate early intervention services¹ for your child and family as addressed in an IFSP;

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 your family from receiving early intervention services;

The right to refuse evaluations, assessments, and services;

¹In New Jersey, "appropriate early intervention services" are determined through the IFSP process. The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in the IFSP. Federal regulations define early intervention services as services that "are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child's development."

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 right to receive services in your child's natural environment to the extent appropriate;

The right to maintenance of the confidentiality of personally identifiable information;

The right to review and, if appropriate, correct records;

The right to an impartial hearing to resolve - disagreements and disputes within the early intervention system; and

The right to file an administrative complaint.

In addition to the general rights noted above, you are entitled to be notified of specific procedural safeguards under the Part C program. These safeguards include: Parental Consent, Prior Notice, Examination of Records, Confidentiality of Information; Individual Child Complaints; Administrative Complaints; and Surrogate Parents. Each of these safeguards is described below.

PARENTAL CONSENT

Consent means that: (1) you have been fully informed of all information relevant to the activity for which consent is sought, in your native language or other mode of communication unless it is clearly not feasible to do so; (2) 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 (3) you

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 an eligible child. Native language must be used unless this is not possible.

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: (1) the initial evaluation and assessment of your child is conducted; and (2) early intervention services are provided. If you do not consent, the agency or local service provider participating in Part C 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, the agency participating in Part C may: (1) provide you with relevant literature or other materials; (2) offer you peer counseling to help your understanding of the value of early intervention and to address your concerns about

participation in the Part C system; and (3) periodically renew contact with you, on an established time schedule, to see if you have changed your mind about the desirability of recommended procedures or services.

If you do not consent to the initial evaluation, the agency participating in Part C may initiate an impartial hearing for resolving parent/provider disagreements including procedures that allow for a fair and impartial opportunity for all parties to be heard.

In addition, as the parent of a child eligible under the Part C program, you may determine whether your child or other family members will accept or refuse any early intervention services under this program. You may also refuse such a service after first accepting it without jeopardizing other early intervention services under this program.

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 the Part C program. (See section on Confidentiality of Information.)

PRIOR NOTICE

Written prior notice must be given to you within a reasonable time before an agency or service provider participating in Part C proposes or refuses to initiate or change the identification, evaluation, or placement of

Personally identifiable information that includes: (1) the name of your child, your name, or the name of other family members; (2) the address of your child; (3) a personal identifier, such as your child's or your social security number; or (4) a list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

your child, or the provision of appropriate early intervention services to your child and your family.

The notice must be sufficiently detailed to inform you about:

- (1) The action that is being proposed or refused;
- (2) The reasons for taking the action; and
- (3) All procedural safeguards that are available under the program.

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 .
- (2) If your native language or other mode of communication is not a written language, the agency, or service provider participating in Part C shall take steps to ensure 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 the requirements of this section have been met.
- (3) If you are deaf, blind, illiterate, or have no written language, the mode of communication must be that normally used by you (such as sign language, braille, or oral communication).

EXAMINATION OF RECORDS

In accordance with the Confidentiality of Information procedures outlined in this booklet, you must be given 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 portion of the Part C program involving records about your child and your family.

CONFIDENTIALITY OF INFORMATION

Each agency participating in Part C must give you the opportunity to inspect and review records relating to your child which are collected, maintained or used by the agency under Part C. The agency shall comply with a request 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.

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

The right to inspect and review records includes:

The following definitions are used in this section: (1) "Destruction" means physical destruction or removal of personal identifiers from information so that it is no longer personally identifiable; (2) "Education Records" or "records" means the records covered by the Family Education Rights and Privacy Act (FERPA); and (3) "Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part.

- (1) The right to a response from the agency participating in Part C to reasonable requests for explanations and interpretations of the record;
- (2) The right to request that the agency provide records containing the information if failure to provide copies would effectively prevent you from exercising the right to inspect and review the records; and
- (3) The right to have someone who is representing you inspect and review the record.

An agency will presume that you have the authority to inspect and review records relating to your child unless the agency has been advised that you do not have the authority under applicable New Jersey law governing such matters as guardianship, separation and divorce.

Each agency participating in Part C shall keep a record of parties obtaining access to any child's records collected, obtained, or used under Part C (except access by parents and authorized employees of the participating 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.

Each agency participating in Part C shall provide you, upon request, a list of the types and locations of records collected, maintained, or used by the agency.

An agency participating in Part C may charge a fee for copies of records which are made for parents under Part C, so long as the fee does not effectively prevent you from exercising your right to inspect and review those records. An agency participating in Part C may not charge a fee to search for or to retrieve information under Part C.

If you believe that information in records collected, maintained, or used under Part C is inaccurate or misleading, or violates the privacy or other rights of your child or family, you may request the agency participating in Part C which maintains the information to amend the information.

- (1) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time after it receives the request.
- (2) If the agency refuses to amend the information as you request, you will be informed of the refusal and be advised of the right to a hearing.

The agency participating in Part C, on request, shall provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. This hearing may be held at the regional level or through the statewide procedural safeguards system.

- (1) 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 shall amend the information accordingly and will inform you in writing.
- (2) If, as a result of the hearing, the agency decides that the information is not accurate, 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 this section must: (a) be maintained by the agency participating in Part C 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 such agency; and (b) if the records of the child or the contested portion are disclosed by such agency to any party, the explanation must also be disclosed to the party. If requested by the parent, the explanation must also be disclosed to parties who have previously received the contested information.

A hearing held under this section must be conducted according to the procedures under the Family Education Rights & Privacy Act (FERPA), which is found in statute at 20 U.S.C. §1232g, and in regulations at 34 CFR Part 99.

Consent to Release Information

Parental consent must be obtained before personally identifiable information is: (1) disclosed to anyone other than officials of participating agencies collecting or using information under Part C, subject to the next paragraph of this section; or (2) used for any purpose other than meeting a requirement under Part C.

Information from your child's early intervention record can not be released to participating agencies without your consent unless the

agency participating in Part C is authorized to do so under FERPA.

Each agency participating in Part C must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official of each agency participating in Part C must be responsible for insuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding New Jersey's Part C policies and procedures which must comply with IDEA and FERPA.

Each agency participating in Part C must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally identifiable information.

PARENT NOTICE
Your service coordination unit and/or early intervention program provider may regularly share directory information that could include your child's name, address, date of birth, telephone number, personal identification number and/or service provider. This information is shared between your service coordinator and other agencies within the early intervention system in order to provide better coordination of your family's services and provide timely communication with you.

The agency participating in Part C must inform parents when personally identifiable information collected, maintained, or used under Part C is no longer needed to provide services to the child.

The information must be destroyed, at the request of the parents. (Permanent records of child's name, address, and phone number may be maintained.)

IMPARTIAL DUE PROCESS HEARING AND MEDIATION FOR INDIVIDUAL CHILD COMPLAINTS

Individual child complaints can be resolved through either an impartial due process hearing or a mediation. If you disagree with an agency or local service provider participating in Part C, on the (1) identification, (2) evaluation, (3) placement of your child, or (4) provision of appropriate early intervention services to your child or family, you have the right to a timely administrative resolution of your concerns through an impartial due process hearing.

In addition, New Jersey offers mediation as a possible alternative to resolving disagreements. Mediation is viewed as voluntary and freely agreed to by both parties, and parents/providers are not required to use it. Mediation must be

completed within 15 days of your request and may not be used to deny or delay your rights to a due process hearing under Part C.

The due process hearing must be completed, and a written decision made, within 30 days from the date of the complaint. (Mediation, if attempted, must occur within the same 30 days.)

Hearing officers are impartial persons appointed to conduct the due process hearing. The hearing officer must:

- (a) Have knowledge about the provisions of Part C and the needs of, and services available for, eligible children and their families; and
- (b) Perform the following duties:
 - (i) 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;
 - (ii) Provide a record of the hearing proceedings, including a written decision.

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Hearing officers used in a due process hearing and mediators used in mediation must be "impartial." "Impartial" means that the person appointed to serve as a hearing officer (or mediator) of the due process proceeding --

- (a) Is not an employee of any agency or program involved in providing 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.

A person who otherwise qualifies under this section is not an employee of an agency solely because the person is paid by the agency to implement the disagreement resolution process.

Under the Part C program, you are given the rights listed below in any due process hearing carried out under this section.

- (1) To be accompanied and advised by a lawyer and/or by individuals with special knowledge or training about early intervention services for children eligible under Part C;

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- (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 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.

Any proceedings for implementing the due process hearing process in this section must be carried out at a time and place that is reasonably convenient to you.

No later than 30 days after the Department of Health and Senior Services receives your disagreement (complaint), the due process impartial proceeding required under this section is completed and a written decision is mailed to each of the parties.

Any party not satisfied with the findings and decision of the due process hearing has the right to bring a civil action in state or federal court.

During the pendency (time period) of any proceeding involving a parent/provider complaint, your child and family will continue to receive the appropriate early intervention services currently being provided unless the agency participating in Part C and you agree otherwise.

If your complaint involves an application for initial services, your child and family must receive those services that are not in dispute.

To file an individual child complaint, contact:

Colleen Head
Procedural Safeguards Coordinator
New Jersey Early Intervention System
Department of Health and Senior Services
P.O. Box 364
Trenton, New Jersey 08625-0364
(877) 258-6585
Toll Free

ADMINISTRATIVE COMPLAINTS

In addition to the Individual Child Complaints process (discussed in the previous section), an individual or organization may file a written signed complaint with the New Jersey Early Intervention System that any agency participating in Part C is violating a requirement of the Part C program. The complaint must include a statement that a requirement of Part C has been violated and a statement of the facts on which the complaint is based. Further information on procedures for resolving and/or filing complaints can be obtained by contacting:

Colleen Head
Procedural Safeguards Coordinator
New Jersey Early Intervention System
Department of Health and Senior Services
P.O. Box 364
Trenton, New Jersey 08625-0364
(877) 258-6585
Toll Free

SURROGATE PARENTS

The rights of children eligible under Part C are protected even if:

- (1) No parent can be identified;
- (2) The agency participating in Part C, after reasonable efforts, cannot discover the location of a parent; or
- (3) The child is a ward of the State under the laws of New Jersey and does not have someone "acting as a parent" such as a foster parent.

An individual is assigned to act as a "surrogate" for the parent according to the procedures that follow. The procedures include a method for determining whether a child needs a surrogate parent and assigning a surrogate to the child. The following criteria are employed when selecting surrogates:

- (1) Surrogate parents are selected in the manner authorized by New Jersey law.
- (2) A person selected as a surrogate parent:
 - (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 the state lead agency, or other state agency, and will not be any person or any employee of a person providing early intervention services to the child or to any family member of the child.²
- (d) Resides in the same general geographic area as the child, whenever possible.

A 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

²A person who otherwise qualifies to be a surrogate parent under this section is not an employee solely because he or she is paid by an agency participating in Part C to serve as a surrogate parent.

- (4) Any other rights established under the Part C program.

GLOSSARY

- Assessment:** The ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under Part C to identify—
- (a) The child's unique strengths and needs and the services appropriate to meet those needs;
 - (b) The resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability; and
 - (c) The nature and extent of early intervention services that are needed by the child and the child's family to meet the needs in (a) and (b) above.
- Disclosure:** To permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.
- Evaluation:** The procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under Part C, consistent with the definition of "infants and toddlers with disabilities" in 34 CFR 303.16, including

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determining the status of the child in each of the developmental areas.

Family: Defined according to each family's definition of itself including significant others.

Family Assessment: Identification of the family's resources, priorities and concerns relative to enhancing the development of the child.

IFSP: Individualized Family Service Plan (IFSP): A written plan for providing early intervention services to eligible children/families that:

- (a) Is developed jointly by the family and appropriate, qualified personnel providing early intervention services;
- (b) Is based on the multidisciplinary evaluation and assessment of the child and the assessment of the strengths and needs of the child's family, as determined by the family and as required in 34 CFR 303.322; and
- (c) Includes services necessary to enhance the development of the child and the capacity of the family to meet the special needs of the child.

Mediation: A voluntary process freely agreed to by parents and providers to attempt to resolve Part C disagreements. Neither party is required to participate in the mediation process, and both parties must approve any agreement reached. Mediation may not be used to deny or delay your right to an impartial hearing.

M u l t i d i s c i p l i n a r y :
The involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and

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assessment activities in 34 C.F.R. 303.322 and development of the IFSP in 34 C.F.R. 303.342.

Natural Environment: Settings that are natural or normal for children who are your child's age and who do not have a disability.

Parent: A parent, a guardian, a person acting as a parent of a child, or a surrogate parent. The term does not include the State if the child is a ward of the State. **NOTE:** The term "parent" has been defined to include persons acting in the place of a parent, such as a grandparent or stepparent with whom a child lives, as well as persons who are legally responsible for the child's welfare.

NOTE: All citations contained in this glossary are references to 34 CFR Part 303.

For more information contact:

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