

## **BABIES CAN'T WAIT (BCW) PROGRAM POLICY**

### **PROCEDURAL SAFEGUARDS**

*The Department of Public Health (hereafter referred to as State Lead Agency) is responsible for ensuring effective implementation of the procedural safeguards by each participating agency in the State who is involved in the provision of early intervention services under Part C of the Individuals with Disabilities Education Act (IDEA).*

*The purpose of this section is to set forth the procedural safeguards established by the State Lead Agency to protect the rights of eligible infants/toddlers with disabilities and their families in Babies Can' Wait (BCW).*

Procedural safeguards represent one of the most important protections for eligible children and their families, as well as for service providers, within the early intervention system. The BCW Program is responsible for ensuring the effective implementation of these safeguards including confidentiality, parental consent and notice, surrogate parents and dispute resolution procedures.

Families are actively involved every step of the way. They receive important information about their child and family including an initial copy of their child's early intervention record at no cost. This means that not only do they attend meetings and give written consent, but that they are well informed of all options and have made decisions with all of the relevant information available to them.

In order for families to be fully informed of their rights and safeguards, they must also understand their participation in all aspects of the EI system, including what is available to them at no cost, what services might involve cost, and all options available to them. Informed consent ensures that families understand their options and choices so they can make good decisions for their child and for themselves, and that they understand the implications of their decisions.

Procedural safeguards provide important opportunities for reviewing what has occurred with the family, and allow them to reflect and ask questions before going forward.

## A. Definitions

1. "Local lead agency" is defined as one of the Public Boards of Health which administers the local Babies Can't Wait System through each of the 18 health districts.
2. The "State Lead Agency" refers to the Georgia Department of Public Health as the appointed state lead agency.
3. "BCW service provider" means a public or private agency or individual service provider delivering services to a child determined eligible under Part C of IDEA which/who is using any federal, state or local funds, including private insurance proceeds or fees assessed through the Cost Participation Scale for Part C, and has a contract with the local lead agency.
4. "Early Intervention Records" means all records regarding a child that are required to be collected, maintained or used under part C of this Act and the regulations in this part. Early intervention records include evaluation reports and completed test protocols.
5. "Native Language" means
  - (a) When used with respect to an individual who is limited English proficient or LEP
    - (1) The language normally used by that individual, or, in the case of a child, the language used by the parents of the child, except as provided in this paragraph (a)(2) of this section; and
    - (2) For evaluations and assessments the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.
  - (b) Native language when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).

Note: Requiring the native language to be used in all direct contact with a child, especially in providing early intervention services to an infant or toddler with a disability may not be necessary or feasible in all circumstances. However, these changes do not change the longstanding requirements concerning IFSP meetings, obtaining parental consent and prior written notice and procedural safeguards and a description of the notice of referral to part C in the native languages of the various population groups in the state.

6. Family Educational Rights and Privacy Act (FERPA) protects the privacy of children's early intervention records and allows parents certain rights to review records, seek correction of these records if they believe they are inaccurate and to consent to release personally identifiable information from these records. This act protects the privacy of education records while allowing for the effective use of data. More information on FERPA is available at the National Early Childhood Technical Assistance Center (NECTAC) website [www.nectac.org](http://www.nectac.org).
7. Health Insurance Portability and Accountability Act (HIPPA) – Act protects the confidentiality of medical records and other personal health information.

**B. Confidentiality of Personally Identifiable Information and Early Intervention Records**

1. Confidentiality and opportunity to examine records.
  - a. The local lead agency ensures the protection of any personally identifiable information collected, used, or maintained under this part, from the point in time of referral for early intervention services until the participating agency is no longer required to maintain or no longer maintains personally identifiable information regarding that child under applicable Federal and state laws (Family Educational Rights and Privacy Act – FERPA) including the right of parents to receive written notice of and provide written consent to the exchange of such information among agencies, consistent with Federal and State law.
  - b. Information which could identify an individual child or family will not be maintained by the local lead agency which collected it beyond five years after the child exits the program and will not be held by any State level agency except to the extent necessary to carry out the provisions of Part C of IDEA.
    - i. Data items to be collected include but are not limited to; professional and diagnostic information; services needed and provided; IFSP monitoring information; and state and local costs for services provided through Part C of IDEA.
    - ii. No information will be maintained in the early intervention record which is part of a Department of Family and Children Services (DFCS) record of child abuse or neglect.

- c. The local lead agency and EIS provider must comply with a parents request to inspect and review early intervention records about the child and the child's family without unnecessary delay and in no case not more than 10 calendar days after the parent makes a request to inspect and review records.
- d. The access of unauthorized persons to personally identifiable information without parental consent is forbidden.
- e. The official early intervention record must be maintained at the local district BCW office. In order to adequately ensure that these records are protected and the appropriate provisions are in place, the local lead agency shall designate in their local policies who in each agency may have access to this information.
- f. All BCW employees and contracted staff shall comply with all FERPA and HIPAA regulations when utilizing the Babies Information and Billing System (BIBS). These regulations shall also be enforced when staff is working in the field. BCW personnel must access BIBS utilizing a secured LAN or wireless internet connection at all times. All staff shall logout of BIBS or lock their work station if he/she should have to leave the data system to complete another task on the computer or if he/she must leave their desk. While providing services in the natural environment therapists and service coordinators are responsible for locking their computers' when they are not entering data into BIBS and are interacting directly with the child or family.
- g. Parent(s) will be notified and asked for consent prior to the release of any personally identifiable information. This consent documentation shall be filed in the child's early intervention record.

In order for the BCW program to use Medicaid to pay for Part C services the program must obtain parental consent to disclose a child's personally identifiable information to the State agency responsible for administering the State's public benefits or insurance program for billing purposes only. A parent has the right to withdraw their consent to disclosure of personally identifiable information to the State agency responsible for administration of the State's public benefits or insurance program at any time. This consent will be obtained by completion of the Children and Youth with Special Needs Financial Analysis form. If a family's cost participation changes, the five-day written prior notice must be given to the family using the Parental Prior Notice form.

Parental consent is not necessary before the release of records to the local lead agency from service providers under contract to BCW and when a child transfers from one district to another in the BCW program.

- h. In maintaining the early intervention record (hard copy file), the early intervention coordinator ensures those notifications, correspondence, relevant reports, and IFSP documents are stored in the early intervention record and that these records are kept in a secure location.
- i. Documents generated by or on behalf of BCW automatically become part of the early intervention record and are subject to the protections under FERPA.
- j. Families should be encouraged to develop and maintain their own early intervention record.
- k. Documents may have been generated prior to referral to the BCW system and these reports are received, with informed, written parental consent, by the local lead agency for the purposes of eligibility determination or IFSP development and implementation.
  - i. Considered "third party" documents, these documents become a part of the child's early intervention record and are available for parent review under FERPA.
  - ii. These "third party" documents may not be reproduced and distributed by the local lead agency beyond the child's early intervention record without the consent of the author, and even with this consent, cannot be distributed without informed, written parental consent.
  - iii. The rationale for this limited distribution is because these documents were not generated under the supervision or financial support of the BCW system. However, documents including evaluation/assessment reports which are developed at the request of, or on behalf of the local lead agency may be released with informed, written parental consent.

## 2. Consent to exchange information among agencies

For children who may be served by both Babies Can't Wait and Children's Medical Services, Babies Can't Wait and 1<sup>st</sup> Care or Children's Medical Services and 1<sup>st</sup> Care, or by all three programs/services, program staff should obtain informed parental consent for services, written parental consent to request, receive, and release information, and other relevant authorizations from the

parent/legal guardian for both programs at the time of the initial visit/intake.

For example, a child referred to Babies Can't Wait due to severe bilateral hearing loss is also referred to Children's Medical Services for services. A Babies Can't Wait intake coordinator meets with the family to obtain consent for services and necessary releases as well as intake information. During the intake visit, the Babies Can't Wait intake coordinator should also obtain necessary consent and release signatures as required for the Children's Medical Services program enrollment. As a result, the family is able to access services through both programs without having to participate in an additional intake visit/meeting. In addition, access to services is streamlined and the child is able to receive services in a timelier manner because an additional visit is not needed in order to access the Children's Medical Services system.

For example, a premature infant with a Grade III intra-ventricular hemorrhage is referred to Babies Can't Wait and 1<sup>st</sup> Care. A 1<sup>st</sup> Care nurse meets with the family to obtain consent for services and necessary releases as well as intake information. During the intake visit, the 1<sup>st</sup> Care nurse should also obtain necessary consent and release signatures as required for the Babies Can't Wait program enrollment. As a result, the family is able to access services through both programs without having to participate in an additional intake visit/meeting. In addition, access to services is streamlined and the child is able to receive services in a timelier manner because an additional visit is not needed in order to access the Babies Can't Wait system.

\*\* The implementation of this activity will require district-level staff to share general information across CYSN programs and to engage in dialogue about how to best accomplish these tasks. Cross-training of staff will be critical to the successful implementation of these activities.

### 3. Sharing of Information between programs:

- a. For children who may be both Babies Can't Wait and Children's Medical Services, Babies Can't Wait and 1<sup>st</sup> Care, or Children's Medical Services and 1<sup>st</sup> Care, or by all three programs/services, program staff requesting information such as medical records should complete the Release of Information form to reflect that the request is for use by each program (Babies Can't Wait, 1<sup>st</sup> Care, and Children's Medical Services). This enables staff from each of the Children with Special Needs programs to access and review

such records as needed to assist in program planning within each program.

For example, a child enrolled in Children's Medical Services with a diagnosis of spina bifida is also receiving services through Babies Can't Wait and Children 1<sup>st</sup>. When Children's Medical Services staff receives permission from the child's family to request medical records from her neurosurgeon, the request should be written to reflect that records are also intended for use by Babies Can't Wait staff and 1<sup>st</sup> Care. As a result, the physician's office does not have to respond to two or three requests for records and duplicates of records are not unnecessarily stored in child records within the same district.

- b. When completing the DPH Release of Information form, Children's Medical Services, Children 1<sup>st</sup> and Babies Can't Wait should be listed as the programs to which information is being released and from whom information is being shared.
- c. In situations where medical records or other relevant information has already been received by one program and would be beneficial to another CYSN program, programs should seek parent/guardian consent to share records between CYSN programs and then may release information, including third-party records, to other CYSN programs. As stated above, this is possible when districts are functioning as integrated Children with Special Needs units as well as when districts view themselves as a unit and share some common functions.

For example, a child with a diagnosis of a seizure disorder has been receiving Babies Can't Wait and 1<sup>st</sup> Care services for several months and is now being enrolled in Children's Medical Services. The child's Babies Can't Wait record contains medical records that document his diagnosis as well as the results of previous medical testing and intervention efforts. With written parental consent using the DPH Release of Information form, Babies Can't Wait can share the child's medical records with 1<sup>st</sup> Care and Children's Medical Services in order to expedite services for him.

\*\*It is important to note that these guidelines apply to Children and Youth with Special Needs programs within a health district but do not apply to other public health programs that are not included in the CYSN system of programs and services.

#### 4. Definitions related to Personally Identifiable Information and Disclosure

- a. References to “Education records” in Part C is now referred to as “early intervention records”.
  - b. Participating agency include the lead agency and EIS providers and any individual or entity that provides any Part C services, but does not include primary referral sources, or public agencies or private entities that act solely as funding sources for Part C services.
5. Notice to Parents
- a. The local lead agency is required to give adequate notice to fully inform parents about the requirements of the confidentiality of personally identifiable information under Part C of IDEA.
  - b. Before any major identification, location or evaluation activity, the notice to parents of confidentiality requirements must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout their district of the activity. This requirement constitutes the basic, minimum requirement under Child Find.
  - c. The local lead agency assures that adequate notice is given to parents regarding the requirements related to the identification, location, and evaluation of children with disabilities. This notification applies to screening clinics/activities conducted by the local lead agency, as well as general notification to the public that evaluation and assessment services are available at no cost through the local lead agency.
6. Access Rights
- a. Each local lead agency must comply with a parent’s request to inspect and review records without necessary delay and before any meeting regarding an IFSP or any hearing and in no case not more than 10 calendar days after the request has been made.
  - b. Each local lead agency shall provide parent(s) on request, with a list of the types and locations of all early intervention records collected, maintained or used by BCW. This listing shall include those data maintained on the electronic child record system as well as in the early intervention record.
  - c. The parent(s) has a right to request a reasonable explanation and interpretation of the early intervention record. The local lead agency is responsible for ensuring that this occurs in a timely and comprehensive manner. The EI Coordinator will ensure that access



to the early intervention record, if requested, is the right of each parent(s) and will not be denied by the local lead agency due to physical limitations or geographic locations.

- d. The parent may elect to have a representative of the parent inspect and review the early intervention records. Parent must give written consent for this representative to review the early intervention records by completing a release of information form.
- e. The local lead agency may presume that a parent(s) has authority to inspect and review records related to his or her child unless the local lead agency has been advised that the parent(s) does not have the authority under applicable state law or court order governing such matters as guardianship, separation, and divorce.

## 7. Record of Access

Each local lead agency shall keep a record of parties obtaining access to early intervention records collected, maintained, or used by the BCW Program, except access by parents and authorized employees of the BCW Program, including the name of the party requesting access, the date access was given, and the purpose for which the party is authorized to use the records.

- a. An access listing must be posted on the outside of all filing cabinets where child records are maintained, indicating those BCW employees, by title, and others in accordance with FERPA, who may access individual child records. This listing should include the EI Coordinator, his/her supervisor, the District Health Director, support staff, BCW Service Coordinators and others such as, state employees for the purposes listed in FERPA including monitoring, program or fiscal audits, or complaint investigation.
- b. The cabinets must have locks.
- c. If an individual who is not an employee of BCW wants access to BCW early intervention records, there must be a signed release by the parent(s) authorizing such access. In these instances, the BCW employee with authorized access will obtain the record from the cabinet and reposition it once the authorized individual has completed their inquiry.
- d. An access log will be maintained in each child's record indicating, by signature, date, and purpose, any and all access to the early intervention record made by persons who are not employees of the BCW Program.

- e. If the local lead agency utilizes student interns, they may access the early intervention record through the supervision arrangement at the local level, providing that the supervisor has access to the record through either 1) BCW employment, or 2) a signed and dated release of information maintained in the child's record.

8. Records on More than one Child

If any early intervention record includes information on more than one (1) child, the parent(s) of that child has the right to inspect and review only the information relating to his or her child, or to be informed of that specific information.

9. List of Types and Locations of Information

The Babies Information and Billing System (BIBS) maintained by the local lead agency includes progress notes and other information entered by the (EI) provider(s) that is (are) part of the early intervention record.

10. Fees for records

- a. A participating agency must make available to parents an "initial copy" of the child's early intervention record and a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting at no cost to the parent. A participating agency may not charge a fee to search for or to retrieve information.
- b. The local lead agency shall make copies available of requested all early intervention records maintained in the comprehensive early intervention record to parent(s) upon request, and shall ensure that any fee charged is reasonable and does not prevent the parent(s) from exercising their right to inspect and review records.
- c. If a complaint has been filed, timely access to records is imperative and cannot be unduly delayed.

11. Amendment of records at a parent's request.

- a. A parent(s) who believes information in his or her child's early intervention records collected, maintained, or used is inaccurate or misleading, or violates the privacy or other rights of the child or parent, may request the local lead agency maintaining the records to amend the information. The right to amend records only applies to information about the parent and child not other family members.

- b. The local lead agency shall decide whether to amend the records in accordance with the request, within a reasonable period of time of the receipt of the request, but in no case later than 30 calendar days from receipt of the request.
- c. If the local lead agency decides to refuse to amend the information in accordance with the request, the parent(s) must be informed of the refusal and advised of their right to a hearing related to the refusal under section 303.411.

## 12. Opportunity for a Hearing

A parent may request a due process hearing in Section 303.430(d)(1) to challenge information in their child's record under Part C due process hearing procedures.

## 13. Result of Hearing

- a. If, as a result of the records hearing, the participating agency decides that the information is inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, it must amend the information accordingly and so inform the parent in writing.
- b. If, as a result of the records hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, it must inform the parent of the right to place in the early intervention records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
- c. Any explanation placed in the early intervention records of the child must:
  - i. Be maintained by the agency as part of the early intervention records of the child, as long as the record or the contested portion is maintained by the agency; and
  - ii. If the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

- d. The local lead agency shall make its decision in writing within a reasonable period of time of the receipt of the request, but in no case later than 30 calendar days from receipt of the request.
- e. The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

#### 14. Hearing Procedures

The minimum requirements for a records hearing under 34 CFR 99.22 (FERPA) are as follows:

- a. The local lead agency shall hold the hearing within 30 calendar days after it has received the request for the hearing from the parent(s).
- b. The local lead agency shall give the parent(s) 10 calendar days prior written notice of the date, time, and place of the hearing.
- c. The hearing may be conducted by any individual in the local lead agency who does not have a direct interest in the outcome of the meeting.
- d. The local lead agency or institution shall give the parent(s) a full and fair opportunity to present evidence relevant to the issues raised under § 99.21. The parent(s) may, at their own expense, be assisted or represented by one or more individuals of his/her own choice, including an attorney.

#### 15. Consent prior to disclosure or use.

- a. A lead agency or other participating agency may not disclose personally identifiable information to any party except participating agencies (including the lead agency and EIS providers) that are part of the State's Part C system without parent consent unless authorized to do so. Local lead agencies are permitted to identify all children potentially eligible for services under Part B of the IDEA by providing notification to the SEA and the appropriate LEA when children are transitioning from Part C to Part B services. See more information under the Transition policy.
- b. If the family does not want the limited contact information (child's directory information) sent to the LEA, a parent must sign the "opting out" form (part of the consent form) and return the original copy to the local Babies Can't Wait office within 5 calendar days. If

the appropriately signed “opting out” statement is not received within five (5) calendar days from the date that the information is presented to a child’s parent or parents, then the limited contact information that includes the child’s name, birth date and parent(s) contact information (child’s directory information) will be sent to the LEA where a child resides. A notation of whether the parent opted out of sending information to the LEA is recorded on the child detail page of BIBS.

- c. The local lead agency must make reasonable efforts to ensure that families:
  - i. Are fully aware of the nature of the referral and services that would be available under Part B; and
  - ii. Understand that the child will not be able to receive the services unless consent is given to proceed with referral.
- d. The local lead agency is required to give adequate notice to fully inform parents about the requirements of the confidentiality of personally identifiable information under Part C of IDEA.

#### 16. Safeguards

- a. The local lead agency shall protect the confidentiality of any personally identifiable information at collection, storage, disclosure, and destruction stages.
- b. One official of the local lead agency shall assume responsibility for ensuring the confidentiality of personally identifiable information.
- c. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures concerning the confidentiality of any personally identifiable information and 34 CFR Part 99.
- d. Each local lead agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

#### 17. Destruction of Information

- a. The local lead agency shall maintain a child's early intervention record for at least five (5) years after the child leaves the early intervention system, unless the parent(s) requests the destruction of the records prior to that time.

- b. If there is a complaint or audit investigation, the record may not be destroyed until resolution and closure has been resolved.
- c. When records are to be destroyed, the local lead agency will contact the parent(s) first to see if they want to take possession of the record. This contact must be made in a timely manner and must inform the parent(s) that the record will be destroyed should they decide not to claim it. If there is no response from the parent records will be destroyed in a way that protects the confidentiality of all personally identifiable information, such as shredding or incineration.
- d. A permanent early intervention record of a child's name, date of birth, parent contact information (including address, phone number), name of service coordinator(s) and EIS provider (s) and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation by the local lead agency. This information is a federal requirement under FERPA and serves to document that a child was served even after the formal record has been destroyed.

## 18. Enforcement

The State Lead Agency assures that all applicable public agencies in the state comply with the requirements on confidentiality of information through the development of interagency agreements, administrative rules, and coordinated monitoring efforts at the state level.

### **C. Parental Consent and Notice**

Procedural safeguards are included under part C of IDEA to ensure that families are informed about and involved in the referral and post referral processes including the decision-making process for services for their child and family. These decisions include development of outcomes in the IFSP, identification of services, agreement to proceed, and knowledge when a service change (reduction, termination, etc.) is being considered. Rather than being a stand-alone activity, procedural safeguards must be offered to families during the ongoing process of BCW participation.

1. Parent consent and ability to decline services.
  - a. Parental consent is required before a developmental screening is conducted by Children 1<sup>st</sup> or BCW, before all evaluations and assessments of a child, and prior to use of public benefits or private

insurance if such funding sources are used to pay for Part C services.

- i. If the screening is completed by a community partner, the screening must be current in order for Children 1<sup>st</sup> /BCW use it in the evaluation process.
- ii. The parent has a right to request an evaluation at any time during the screening process.
- iii. The local lead agency may not use the due process hearing procedure to challenge a parent's refusal to provide any consent under section 303.420 (c) of the federal regulations issued on September 28, 2011.
- iv. The lead agency or an EIS provider must however accept referral without parent consent. The district must then notify the parent of the referral. The local lead agency must give notice when a child is referred to Babies Can't Wait to fully inform them about the requirements regarding confidentiality requirements.

Examples of times in which parental consent must occur include:

- When discussing the early intervention system with families and at the initial intake visit;
  - While explaining the difference between screening, evaluation and assessment, and obtaining a family's consent for all and involving them in scheduling and planning the processes for eligibility determination;
  - While discussing their right to see their child's BCW early intervention record and to request changes, etc. in that record;
  - When obtaining family participation and written consent to implement the services and activities in the IFSP; and
  - When actively involving families in the monitoring, review, and evaluation of the IFSP and when informing them in writing when changes are anticipated, even though these things have been discussed with them previously.
- b. Information on consent requirements must be provided to families in ways to ensure they understand the implications of the decisions they are making. In addition to informing families, follow-up with a brief letter to confirm the discussion and give family information about what to do if they want to reconsider the decision. The local lead agency must document a parent's refusal to consent to services.
  - c. Federal consent requirements specify that the parent(s) has the right to determine whether they, their child or other family members

will accept or decline any early intervention service under BCW and may decline such services after first accepting them without jeopardizing other early intervention services.

- d. If consent is not given by the parent(s), the local lead agency shall make reasonable efforts to ensure that the parent(s):
    - i. is fully aware of the nature of the evaluation and assessment or services that would be available; and
    - ii. understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.
  - e. In situations in which a parent(s) declines an early intervention service recommended by the IFSP team, and elects to purchase that service privately outside of BCW (i.e. chooses a non-contracted service provider), the following procedures apply. If the parent(s) decides to participate in BCW and accepts any services (other than the declined service), including service coordination, the IFSP is completed, the service obtained by the family outside the system is documented under 'other services,' Section 8 of the IFSP document, and the parent(s) signs the Decline Services form (state required form). The parent(s) may, at a later date, through the IFSP process, accept the service previously declined. Parent(s) may also decline participation in BCW altogether.
2. Prior written notice and procedural safeguards notice.
- a. Written prior notice must be given to the parent(s) of a child eligible for early intervention services at least 5 calendar days before a participating agency or EIS provider proposes or refuses to initiate or change:
    - i. the identification (screening), evaluation, or placement of the child, or
    - ii. the provision of appropriate early intervention services to the child and the child's family.
  - b. The notice must be in sufficient detail to inform the parent(s) about:
    - i. the action that is being proposed or refused;
    - ii. the reasons for taking the action;
    - iii. all procedural safeguards that are available under BCW; and
    - iv. the State complaint procedures, including a description of how to file a complaint and timelines under those procedures.



- c. If a local lead agency determines that a child is ineligible under Part C of the IDEA, the lead agency is required to provide the parent with prior written notice including information about the parent's right to dispute the eligibility determinations through dispute resolution mechanisms including mediation, a due process hearing, or state administrative complaint.
- d. The local lead agency must provide information to assist families in understanding their rights, opportunities, and responsibilities through procedural safeguards for them to be able to apply these options accordingly. Rights must be explained and given in writing to families in the language normally used by the parent unless it is clearly not feasible to do so, or mode of communication understandable to the family. (See specific definition §303.25 - Native Language). It is the responsibility of the local lead agency to ensure that these procedural safeguards are implemented at the local level and that all BCW service providers are knowledgeable of them and abide by them.
- e. When informing parents of their procedural safeguards available under Part C of IDEA (including FERPA), the information should be available to families in a number of ways. Minimally, and at points required by federal regulations, families must receive a copy of the Notice of Infant/Toddler and Family Rights under Babies Can't Wait booklet, which is the full text of the technical language. In this booklet a description of mediation, how to file a State complaint and due process complaint is explained. A condensed format version of the booklet, which also meets all of the federal requirements, may be given to families after they have initially received the booklet. Additionally, the local lead agency may use brief pamphlets, videos, or other materials that summarize the opportunities available to families in language that is more "family friendly."

#### **D. Surrogate Parents**

1. A case-by-case review is required so that a local lead agency is fully able to determine the need for the appointment of a surrogate parent(s) to represent the interest of a child with disabilities. Each local lead agency must have written procedures for identifying children in its jurisdiction (health district) who are in need of surrogate parents according to the definition. The local lead agency must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 calendar days after a public agency determines that the child needs a surrogate parent. A local Lead agency's method of determining whether a child needs surrogate parent(s) must include:

- a. The identification of staff members or BCW service providers responsible for referring children in need of a surrogate parent(s);
  - b. The provision of in-service training for determining whether a child needs a surrogate parent(s); and
  - c. The establishment of a referral system within the catchment area (health district) of a local lead agency for the appointment of a surrogate parent(s).

In developing the local listing, it may be necessary for a local lead agency to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents. Individuals who are not on the local lead agency's list may be eligible to serve as a surrogate parent(s), subject to the local lead agency's discretion.

It should be noted, however, that geographic proximity is essential to the surrogate parent/child relationship. The needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the local lead agency's determination of surrogate eligibility.
2. Other factors which warrant the local lead agency's attention are:
    - a. Consideration of the appointment of a relative to serve as a surrogate parent(s);
    - b. Consideration of the appointment of a foster parent(s) who has the knowledge and skills to represent the child adequately; and
    - c. Consideration of the appointment of a qualified person of the same racial, cultural, and linguistic background as the child.
  3. Each local lead agency shall ensure that a person selected as a surrogate parent(s) has no interest that conflicts with the interests of the child he or she represents. A person assigned as a surrogate parent(s) shall not be an employee of the lead agency or any other public agency or EIS provider that provides early intervention services, education, care or other services to the child or any family member of the child. The local lead agency shall ensure that this individual receives in-service training regarding Part C of IDEA.
  4. If a child is under the care or supervision of the state, the surrogate parent(s) may not be confused with the state-assigned Division of

Family and Children Services (DFCS) case worker responsible under State law for the obligations of the DFCS as custodial parent. In these instances, it is not permissible by federal law for the DFCS case worker to also serve as the child's surrogate parent(s) for the purposes of BCW.

- a. The surrogate parent(s) and case worker must coordinate and work together for the overall benefit of the child. It is imperative that the surrogate parent(s) communicate regularly with the case worker to inform him/her of all relevant activities and commitments made on behalf of the eligible child by the surrogate parent(s).
  - b. If the child is a ward of the state, the judge overseeing the infant or toddler's case may assign a surrogate parent provided that the surrogate parent meets the requirements of a surrogate parent based on Federal and state rules and regulations.
5. The activities and obligations of the surrogate parent(s) are restricted to those related only to the implementation of Part C of IDEA for the eligible child. A surrogate parent(s) may represent a child in all matters related to the following:
- a. The evaluation and assessment.
  - b. Development and implementation of the IFSP, including annual evaluations and periodic reviews.
  - c. The ongoing provision of early intervention services to the child.
  - d. Any other rights established under Part C of IDEA and the implementing regulations in 34 CFR Part 303.

#### **E. Dispute Resolution Options**

The Lead Agency must have written procedures for the timely resolution of complaints through three mechanisms (1) mediation, (2) minimum state complaint procedures and (3) due process hearing procedures.

#### **F. Mediation**

1. The purpose of mediation is to facilitate the resolution of a complaint in an informal, non-adversarial atmosphere. Mediation is voluntary by both parties, may be used at any time, regardless of whether

a due process complaint or a State complaint is filed, must be freely agreed to by both parties, and must be provided at no cost to the family. Families cannot be required to use the mediation process. Mediation must not be used to deny or delay a parent's rights under Part C of IDEA.

2. Mediation is conducted by a qualified and impartial mediator who is trained in effective mediation techniques and who is knowledgeable in laws and regulations relating to the provision of early intervention services. The lead agency must select mediators on a random, rotational or other impartial basis.
3. Request for Mediation of a Complaint Related to Individual Child/Family Issues
  - a. If both parties consent to participate in mediation, a request for mediation must be made to the local lead agency in writing. This request must be signed by the parties filing the request and must contain a statement identifying the point(s) of disagreement related to the identification, evaluation, or placement of or provision of early intervention services to the child with disabilities.
  - b. The parent(s) may simultaneously file a request for mediation and for an impartial due process hearing. If a mediation result in resolution of the disagreement before the impartial due process hearing is conducted, the hearing is canceled.
  - c. Families should be encouraged to file for mediation as one approach to conflict resolution. The decision to request mediation must be made by both parties and cannot be used to delay the impartial due process hearing request and provision of a timely hearing and resolution within 30 calendar days of the initial request.
  - d. The mediator will contact both parties to review the specifics of the complaint and the mediation process, and to schedule the time and location of the mediation. Mediation shall be conducted at a location convenient to both parties. If either party chooses to have an attorney present for the mediation, the mediator must be notified at least 48 hours prior to the scheduled mediation.
  - e. If the parties resolve the dispute, they must sign a legally binding written agreement that is enforceable in any State court of competent jurisdiction or in a district court of the United States. The mediation agreement must not conflict with state or federal law or policy of the State Lead Agency and must be to the satisfaction of both parties. The parties' satisfaction shall be indicated by the

signatures of both parties on the written agreement. Both parties are given a signed copy of the agreement at the end of the mediation session. If an agreement is reached, it is the responsibility of the Service Coordinator to convene the IFSP team to make any necessary changes in the IFSP within five (5) working days of the signing of the agreement.

## **G. STATE COMPLAINT PROCEDURES**

*Written complaints filed under this section may concern allegations of violations by any public agency in the state that receives funds under Part C of IDEA, including the State Lead Agency and the Interagency Coordinating Council (ICC); other public agencies that are involved in the state's early intervention program; or any public agency or private service provider participating in BCW who receive Part C funds on a contract basis, from a public agency, to carry out a given function or provide a given service required under Part C.*

*Complaints under this section are filed with the State Lead Agency and are in addition to any other rights under State or Federal law.*

1. Adoption of State complaint procedures.
  - a. An individual or organization may file a written signed complaint with the State Lead Agency. Written complaints includes the signature and contact information for the complainant, and if the alleged violations relate to a specific child, require that the complaint include the name and address of the child, a description of the nature of the problem, and a proposed resolution of the problem to the extent know and available to the party at the time the complaint is filed. The complaint must allege a violation that occurred no more than one year prior to the date that the complaint is received. The complainant must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the lead agency.
  - b. Local lead agencies provide information regarding complaint procedures to parents through service coordinators and parent educators. Other interested parties are informed about complaint procedures through the local Interagency Coordinating Councils (ICC) and other local public awareness efforts.
2. Remedies for Denial of Appropriate Services.
  - . The lead agency must address failure to provide appropriate services, including corrective action plans appropriate to address

the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and appropriate future provision of services for all infants and toddlers with disabilities and their families.

### 3. Minimum Complaint Procedures

- a. Within 60 calendar days after a complaint is filed each lead agency must complete an independent on-site investigation if the lead agency determines that an investigation is necessary;

The on-site team must take steps necessary to make a recommendation to resolve any differences. These steps include a review of records as applicable, interviews, and on-site visits. The on-site team will make written recommendations to the complaint officer.

- b. The lead agency gives the complainant the opportunity to submit additional information either orally or in writing; about the allegations in the complaint;
- c. The lead agency, public agency or EIS provider has an opportunity to respond to the complaint. The complaint officer must address the issue in writing and request a response within 10 working days from the local lead agency and/or BCW service provider directly involved. The local lead agency and/or BCW service provider involved is required to respond directly to the complaint, stating in writing any explanations or actions to be taken.
  - i. At the discretion of the lead agency, a proposal to resolve the complaint may be made. If this action is taken copies of the letter are sent to the appropriate local lead agency and/or BCW service provider heads, and the person(s) or group that issued the complaint; and
  - ii. An opportunity for a parent who filed complaint and the lead agency, public agency or EIS provider to voluntarily engage in mediation.
- d. The lead agency reviews all relevant information and makes an independent determination as to whether the lead agency, public agency or EIS provider is violating a requirement of part C of the Act.
  - i. The complaint officer must send, in writing, the steps necessary to resolve the complaint.
  - ii. The complaint officer must review the local lead agency and/or BCW service provider response and if the issue is

fully resolved, make an independent determination as to whether the local lead agency and/or BCW service provider is violating Part C of IDEA.

- e. The lead agency issues 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.

This letter of notification includes specific requirements and time lines that shall be met in order to continue to receive Part C of IDEA federal funds. This written decision shall address each allegation in the complaint and contain findings of fact, conclusions, and the reasons for the State Lead Agency's final decision. Copies of the final letter outlining the procedures are sent to all appropriate parties.

- f. Extensions of the 60 day timeline for responding to the complaint may be granted if the complainant, lead agency, public agency or EIS provider agree to engage in mediation or due to exceptional circumstances that exist with respect to a particular complaint.
- g. State Lead Agency staff assigned to the complaint shall, if needed, provide technical assistance, negotiations, and corrective actions to the local lead agency and/or BCW service provider to achieve compliance. The complaint officer shall monitor the implementation of the final decision through conference calls, follow-up on-site visits, or written reports.

#### 4. Filing a Complaint

- a. Complaints from any public agency, private individuals, or organizations regarding to the provision of early intervention Services for a child with disabilities or a group of children with disabilities should be addressed as follows:  
Babies Can't Wait  
Georgia Department of Public Health  
#2 Peachtree Street, NW Room 11-216  
Atlanta, Georgia 30303-3186
- b. The written complaint must include –
  - i. A statement that the lead agency, public agency, or EIS provider have violated a requirement of part C of the act.
  - ii. The facts on which the complaint is based.

- iii. The signature and contact information for the complainant; and
- iv. If alleging violations with respect to a specific child.
  - a. The name and address of the resident of the child;
  - b. The name of the EIS provider serving the child;
  - c. A description of the nature of the problem of the child, including facts relating to the problem; and
- v. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- c. The complaint must allege a violation that occurred not more than one year before the date that the complaint is received
- d. The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the lead agency.

#### **H. Part C Due Process Hearing Procedures Under Section 639 of the Act**

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

1. Appointment of an impartial due process hearing officer.
  - a. The person assigned to conduct an impartial due process hearing must have knowledge about the statutes, regulations, and rules directing the early Babies Can't Wait Standards and Implementation Manual - Procedural Safeguards revised January 2012, early intervention system, and the needs of, and services available for, eligible infants and toddlers with disabilities and their families.
  - b. The impartial hearing officer shall:
    - i. Listen to the presentation of relevant viewpoints 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 which contains findings of fact, conclusions, and the reasons for the decision.
2. Impartial means that the due process hearing officer:



- a. Is not an employee of the lead agency or an EIS provider involved in the provision early intervention services or care of the child.
  - b. Does not have personal or professional interest that would conflict with his or her objectivity in implementing the process.
  - c. A person who otherwise qualifies to conduct an impartial due process hearing pursuant to Part C shall not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this part.
3. Parental rights in due process hearing proceedings
- a. When families disagree with the identification, evaluation, placement of their child, or services provided to their child, they may request a due process hearing. Regardless of the outcome of such a hearing, consent must be obtained by the parent(s) for services subsequent to this action. Not only does the due process hearings process be available for disputes regarding children found eligible for BCW but also for disputes regarding the identification of children referred to BCW.
  - b. Parents may initiate a request for a hearing by notifying the local lead agency in writing. The complaint must be signed by the parent(s) filing the complaint and must contain a statement identifying the point(s) of disagreement related to the identification, evaluation, or placement of their child, or provision of early intervention services for their child with disabilities. The local lead agency shall assure that the processes for resolving complaints is explained to parents within five (5) working days of receipt of the complaint.
  - c. The local lead agency shall inform a parent(s) of any free or low-cost legal services and other relevant services available if:
    - i. The parent(s) requests the information; or
    - ii. The parent(s) initiates a hearing in accordance with Part C.
  - d. Any parent involved in a due process hearing has the right to:
    - i. Bring others with them, including legal counsel who may advise parents or others with expertise in early intervention services or who are particularly knowledgeable about the child, the child's disability, or the issues at hand relative to the hearing. If either party plans to be represented by an attorney, they must notify the opposing party and the Office

- of State Administrative Hearings (OSAH) within three (3) working days after receipt of the notice of the hearing.
    - ii. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
    - iii. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) calendar days before the hearing;
    - iv. Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and
    - v. Receive a written copy of the findings of fact and decisions at no cost to the parent.
  - e. During the complaint period, unless the lead agency and parent agree otherwise, the child and child's family must continue to receive the appropriate early intervention services in the setting identified in the IFSP that are consented to by the parents.
  - f. The implementation of services that are in debate may be delayed until resolution of the complaint unless the services were previously set forth in an IFSP prior to the complaint. In this case, the services must continue to be provided during the complaint resolution period. If the issues relate to initial eligibility for BCW, no early intervention services shall be provided until a resolution is reached.
4. Convenience of hearings and timelines
- a. The Office of State Administrative Hearings (OSAH) has 30 calendar days upon receipt of the complaint to complete the hearing and issue a written decision to both parties. However, the hearing officer may grant specific extensions of time beyond the 30-day timeline at the request of either party.
  - b. The Office of State Administrative Hearings (OSAH) provides individuals to serve as administrative law judges who function as impartial hearing officers to implement the impartial due process hearing.
  - c. Administrative law judges must be active members in good standing with the State Bar of Georgia and attend the training sessions provided by the State Lead Agency in the principles and regulations of Part C of IDEA and state required proceedings.
  - d. Upon receipt of notification from a local lead agency that a hearing has been requested, OSAH appoints an administrative law judge to

function as the impartial hearing officer. An administrative law judge must decline a case or withdraw in a particular case if he or she has a conflict of interest. In that event, OSAH assigns another administrative law judge.

- e. The Office of State Administrative Hearings will schedule the hearing at a time and location reasonably convenient to the parent(s) and will notify both parties in writing. Information, including evidence to be presented, must be shared by both parties at least five (5) days prior to the hearing. While not required, it is common courtesy to advise all parties of the specific individuals who will be representing or accompanying each party involved.

5. Civil Action

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

### REFERENCE

#### FEDERAL POLICY (34 CFR 400-438)

#### Section 303.400 as used in this Part:

The Georgia Department of Public Health (hereafter referred to as State Lead Agency) must:

- (a) Establish or adopt the procedural safeguards that meet the requirements of this subpart, including the provisions on confidentiality in §§ 303.401 through 303.417, parental consent and notice in §§ 303.420 and 303.421, surrogate parents in §303.422 and dispute resolution procedures in § 303.430;
- (b) Ensure the effective implementation of the safeguards by each participating agency (including the state lead agency and EIS providers) in the statewide system that is involved in the provision of early intervention services under this part; and
- (c) Make available to parents an initial copy of the child's early intervention record, at no cost to parents.

#### Definitions

#### Section 303.7

**"Consent" means that:**

- (a) The parent(s) has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language, as defined in § 303.25;**
- (b) The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and**
- (c) (1) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time**
  - (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).**

#### **Section 303.9**

**"Day" means calendar day, unless otherwise indicated.**

#### **Section 303.25**

- (a) "Native language," when used with respect to an individual who is limited English proficient or LEP (as that term is defined in section 602(18) of the Act), means –**
  - (1) the language normally used by that individual , or, in the case of a child, the language used by the parents of the child, except as provided in this paragraph (a)(2) of this section; and**
  - (2) for evaluations and assessments conducted pursuant to § 303.312 (a) (5) and (a) (6), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.**
- (b) Native language when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).**

#### **Section 303.27**

**(a) Parent means—**

- (1) A biological or adoptive parent of a child;**
- (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;**
- (3) A guardian generally authorized to act as the child’s parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the State if the child is a ward of the State);**
- (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or**
- (5) A surrogate parent who has been appointed in accordance with § 303.422 or section 639(a)(5) of the Act.**

**(b)(1) Except as provided in paragraph (b) (2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational or early intervention service decisions for the child. (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (a)(4) of this section to act as the “parent” of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the “parent” for purposes of part C of the Act, except that if an EIS provider or a public agency provides any services to a child or any family member of that child, that EIS provider or public agency may not act as the parent for that child.**

### **Section 303.29**

**"Personally identifiable" means information as defined in 34 CFR 99.3 as amended, except that the term “student” in the definition of personally identifiable information in 34 CFR 99.3 means “child” as used in this part and any reference to “school” means “EIS provider” as used in this part.**

### **Section 303.37**

**“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.**

**(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in § 303.27**

## **Confidentiality of Personally Identifiable Information and Early Intervention Records**

### **Confidentiality and opportunity to examine records Section 303.401**

- (a) General. Each state must ensure that the parents of a child referred under this part are afforded the right to confidentiality of personally identifiable information including the right to written notice of, and written consent to, the exchange of that information among agencies consistent with Federal and State laws.**
  
- (b) Confidentiality procedures. As required under sections 617 (c) and 642 of the Act, the regulations in §§ 303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR part 99. Each State must have procedures in place to ensure that:**
  - (1) Participating agencies (including the lead agency and EIS providers) comply with the Part C confidentiality procedures in §§ 303.401 through 303.417; and**
  
  - (2) The parent(s) of infants or toddlers who are referred to, or receive services are afforded the opportunity to inspect and review all Part C early intervention records about the child and the child's family that are collected, maintained, or used, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSP's, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record.**
  
- (c) Applicability and timeframe of procedures. The confidentiality procedures described in (b) of this section apply to the**

**personally identifiable information of a child and the child's family that**

- (1) Is contained in early intervention records collected, used or maintained under this part by the lead agency or an EIS provider; and**
- (2) Applies from the point in time when the child is referred for early intervention services under this part until the later of when the participating agency is no longer required to maintain or no longer maintains personally identifiable information regarding that child under applicable Federal and State laws.**

**(d) Disclosure of information.**

**(1) The lead agency must disclose to the SEA and LEA where the child resides in accordance with §303.209 (b) (1) (i) and (b) (1) (ii), the following personally identifiable information under the Act.**

- (i) A child's name**
- (ii) A child's date of birth**
- (iii) Parent contact information (including parents' names, addresses, and telephone numbers).**

**(2) The information is needed to enable the lead agency, as well as LEA's and SEA's under part B of the Act, to identify all children potentially eligible for services under § 303.211 and part B of the Act.**

**(e) Option to inform a parent about intended disclosure.**

**(1) A lead agency, through its policies and procedures, may require EIS providers, prior to making the limited disclosure described above, to inform parents of a toddler with a disability of the intended disclosure and allow the parents a specified time period to object to the disclosure in writing.**

**(2) If a parent (in a State that has adopted the policy described in e (1) of this section) objects during the time period provided by the State, the lead agency and EIS provider are not permitted to make such a disclosure under paragraph (d) of this section and §303.209 (b)(1)(i).**

## **Confidentiality Section 303.402**

**The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by lead agencies and EIS providers pursuant to part C of the Act, and consistent with §§ 303.401 through 303.417. The regulations in §§ 303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR part 99.**

## **Section 303.403**

**(a)“Destruction” means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under §303.29.**

**(b)“Early intervention records” mean all records regarding a child that are required to be collected, maintained or used under part C of the IDEA and the regulations in this part.**

**c) “Participating agency” means any individual, agency, entity or institution that collects, maintains, or uses personally identifiable information to implement the requirements in part C of the Act and the regulations in this part with respect to a particular child. A participating agency includes the lead agency and EIS providers and any individual or entity that provides any part C services (including service coordination, evaluations and assessments, and other part C services) but does not include primary referral sources or public agencies (such as the State Medicaid or CHIP program) or private entities (such as private insurance companies) that act solely as funding sources for Part C Services.**

## **Notice to parents Section 303.404**

**The lead agency must give notice when a child is referred under Part C of the Act that is adequate to fully inform parents about the requirements in § 303.402, including:**



- (a) A description of the children on whom personally identifiable information is maintained; the types of information sought; the methods the local lead agency intends to use in gathering the information, including the sources from which information is gathered; and the uses to be made of the information.**
- (b) A summary of the policies and procedures that the local lead agency must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information.**
- (c) A description of all the rights of parents and children regarding this information, including their rights under the part C confidentiality provisions in §§ 303.401 through 303.417; and**
- (d) A description of the extent that the notice is given in the native languages of the various population groups in the state.**

**Access Rights  
Section 303.405**

- (a) Each participating agency must permit parents to inspect and review any early intervention records related to their children that are collected, maintained, or used by any agency under this part. The agency must comply with a parent's request to inspect and review records without unnecessary delay, and before any meeting regarding an IFSP or any hearing pursuant to §§ 303.430 (d) and 303.435 through 303.439 and in no case, in no more than 10 days after the request has been made.**
- (b) The right to inspect and review early intervention records includes:**
  - (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of a child's early intervention records.**
  - (2) The right to request that the participating agency provide copies of the early intervention records containing the information, if the failure to provide copies would effectively prevent the parent from exercising the right to inspect and review the records; and**
  - (3) The right to have a representative of the parent to inspect and review the early intervention records.**

- (c) An agency may presume that the parent has authority to inspect and review records related to his or her child unless the agency has been provided documentation that the parent does not have the authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce.

## **Record of Access**

### **Section 303.46**

Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under part C of the Act (except access by parents and authorized representatives and 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 early intervention records.

### **Records on more than one child**

#### **Section 303.407**

If any early intervention record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child, or to be informed of that specific information.

### **List of types and locations of information**

#### **Section 303.48**

Each participating agency must provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.

### **Fees for records**

#### **Section 303.49**

- (a) Each participating agency may charge a fee for copies of records that are made for parents, under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records except as provided in paragraph c of this section.
- (b) A participating agency may not charge a fee to search for or to retrieve information under this part.

- (c) A participating agency must provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment and IFSP as soon as possible after each IFSP meeting.

**Amendment of records at a parent's request  
Section 303.410**

- (a) A parent who believes that information in the early intervention records collected, maintained, or used under this part is inaccurate or misleading, or violates the privacy or other rights of the child or parent, may request the participating agency that maintains the information amend the information.
- (b) The participating agency must decide whether to amend the information in accordance with the request, within a reasonable period of time of the receipt of the request.
- (c) If the participating agency refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under § 303.411

**Opportunity for a hearing  
Section 303.411**

The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a due process hearing under the procedures in §303.430(d) (1) provided that such hearing procedures in § 303.413 meet the requirements of the hearing procedures in § 303.413 (i.e. procedures that are consistent with FERPA hearing requirements in 34 CFR 99.222).

**Results of a hearing  
Section 303.412**

- (a) If, as a result of the records hearing, the participating agency decides that the information is inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, it must amend the information accordingly and so inform the parent in writing.

- (b) If, as a result of the records hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, it must inform the parent of the right to place in the early intervention records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.**
- (c) Any explanation placed in the early intervention records of the child must:**

  - (1) Be maintained by the agency as part of the early intervention records of the child, as long as the record or the contested portion is maintained by the agency; and**
  - (2) If the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.**

**Hearing Procedures  
Section 303.413**

**A hearing held under § 303.411 must be conducted according to the procedures under 34 CFR 99.22 (FERPA)**

**Consent prior to disclosure or use  
Section 303.414**

- (a) Except as provided in paragraph (b) of this section, prior parental consent must be obtained before personally identifiable information is:**

  - (1) Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining or using the information under this part, subject to paragraph (b) of this section; or**
  - (2) Used for any purpose other than meeting a requirement this part.**
- (b) A lead agency or other participating agency may not disclose personally identifiable information, as defined in §303.29 to**

any party except participating agencies (including the lead agency and EIS providers that are part of the State's part C system without parental consent, unless authorized to do so under

- (1) Sections 303.401(d), 303.209(b) (1) (i) and (b) (1) (ii) and 303.211 (b) (6) (ii)(A); or
  - (2) One of the exceptions enumerated in 34 CFR Part 99.31 (where applicable to part C) which are expressly adopted to apply to part C through this reference. In applying the exceptions in 34 CFR 99.31 to this part , agencies must also comply with the pertinent conditions in 34 CFR 99.32, 99.33; in applying these provisions in 34 CFR part 99 to part C, the reference to
    - (i) 34 CFR 99.30 means § 303.414(a)
    - (ii) "Education records" means early intervention records under § 303.403(b);
    - (iii) "Educational" means early intervention under this part;
    - (iv) "Educational agency or institution" means the agency under § 303.404;
    - (v) "School officials and officials of another school or school system" means qualified personnel or service coordinators under this part; and
    - (vi) "Student" means child under this part.
- (c) The lead agency must provide policies and procedures to be used when a parent refusal to provide consent under this section (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this part) provided that those procedures do not override a parent's right to refuse consent under § 303.420

#### **Safeguards Section 303.415**

- (a) Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.
- (b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
- (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the

State's policies and procedures under §§ 303.401 through 303.417 and 34 CFR Part 99.

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

#### **Destruction of Information Section 303.416**

- (a) The participating agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under part C of the Act, the GEPA provisions in 20 U.S.C. 1232f and EDGAR 34 CFR parts 76 and 80.
- (b) Subject to paragraph (a) of this section, the information must be destroyed at the request of the parents. However, a permanent record of the child's name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and EIS provider(s), and exit data (including age and year upon exit, and any programs entered into upon exiting) may be maintained without time limitation.

#### **Enforcement Section 303.417**

The lead agency must have in effect the policies and procedures, including sanctions and the rights to file a complaint under §§ 303.432 through 303.434 that the State uses to ensure that its policies and procedures, consistent with §§ 303.401 through 303.417 are followed and that the requirements of the Act and the regulations in this part are met.

#### **Parental Consent and Notice Section 303.420**

**Parent consent and ability to decline services.**

- (a) The lead agency must ensure parental consent is obtained before:

- (1) Administering screening procedures under § 303.320 that are used to determine whether a child is suspected of having a disability;
  - (2) All evaluations and assessments of a child conducted under §303.321;
  - (3) Early intervention services are provided to the child under this part;
  - (4) Public benefits or insurance or private insurance is used if such consent is required under § 303.520; and
  - (5) Disclosure of personally identifiable information consistent with §303.414
- (b) If a parent does not give consent under paragraph (a) (1), (a) (2), or (a) (3) of this section, the lead agency must make reasonable efforts to ensure that the parent:
- (1) Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and
  - (2) Understands that the child will not be able to receive the evaluation, assessment or early intervention services unless consent is given.
- (c) The lead agency may not use the due process hearing procedures under this part or part B of the Act to challenge a parent's refusal to provide any consent that is required under paragraph (a) of this section.
- (d) The parents of an infant or toddler with a disability:
- (1) Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention services under this part at any time, in accordance with State law; and
  - (2) May decline a service after first accepting it without jeopardizing other early intervention services under this part.

### **Prior written notice and procedural safeguards notice**

## **Section 303.421**

- (a) General.** Prior written notice must be provided to parents a reasonable time before the lead agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler'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 this subpart, including a description of mediation in §303.431, how to file a State complaint in §§303.432 through 303.434 and a due process complaint in the provisions adopted under §303.430 (d) and any 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 as defined in § 303.25, of the parent, or other mode of communication used by the parent, 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 EIS provider must 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(s) understands the notice; and
  
    - (iii)** There is written evidence that the requirements of this paragraph have been met.



**Surrogate Parents  
Section 303.422**

- (a) General. Each lead agency or other public agency must ensure that the rights of a child are protected when:**
  - (1) No parent (as defined in § 303.27) can be identified;**
  - (2) The lead agency, or other public agency, after reasonable efforts, cannot locate 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.**
  - (1) 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 parent. This assignment process must include a method for**
    - (i) Determine whether a child needs a surrogate parent; and**
    - (ii) Assigning a surrogate parent to the child.**
  - (2) In implementing the provisions under this section for children who are wards of the State or placed in foster care, the lead agency must consult with the public agency that has been assigned care of the child.**
- (c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by the lead agency under paragraph (b) (1) of this section, may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements in paragraphs (d) (2) (i) and (e) of this section.**
- (d) Criteria for selection of surrogate parents.**
  - (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.**
  - (2) Public agencies must ensure that a person selected as a surrogate parent;**

- (i) Is not an employee of the lead agency or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child.
  - (ii) Has no personal or professional interest that conflicts with the interests of the child he or she represents; and
  - (iii) Has knowledge and skills that ensure adequate representation of the child.
- (e) **Non-Employee Requirement: compensation.**

A person who is otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

- (f) **Surrogate parent responsibilities.** The surrogate parent has the same rights as a parent for all purposes under this part.
- (g) **Lead agency responsibility.** The lead agency must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

## **Dispute Resolution Options**

### **Mediation**

#### **Section 303.431**

- (a) **General.** Each lead agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.
- (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 both parties;**
  - ii. Is not used to deny or delay a parent’s right to an impartial due process hearing or to deny any other rights afforded under Part C of Act; and**
  - iii. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.**
- (2)**
- (i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relation to the provision of early intervention services.**
  - (ii) The lead agency must select mediators on a random, rotational or other impartial basis.**
- (3) The State must bear the cost of the mediation process. Including the costs of meetings described in paragraph D, (“Meeting to encourage mediation”) 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) 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 --**
- (i) States that all discussion 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; and**
  - (ii) Is signed by both the parent and a representative of the lead agency who has the authority to bind such agency.**
- (6) A written signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.**
- (7) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.**

- (c) Impartiality of mediator.**
  - (1) An individual who serves as a mediator under this part**
    - i. May not be an employee of the lead agency or an EIS provider that is involved in the provision of early intervention service or other services to the child; and**
    - ii. Must not have a personal or professional interest that conflicts with the person's objectivity.**
  - (2) A person who otherwise qualifies as a mediator is not an employee of a lead agency or an early intervention provider solely because he or she is paid by the agency or provider to serve as a mediator.**
- (d) Meeting to encourage mediation.**

**A lead agency may establish procedures to offer to parents and EIS providers that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party.**

- (1) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act and;**
- (2) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.**

## **STATE COMPLAINT PROCEDURES**

### **REFERENCE FEDERAL POLICY (303.432-303.434)**

#### **Adoption of State Complaint Procedures Section 303.42**

- (a) General. Each lead agency must adopt written procedures for-**

- (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements in § 303.433 by providing for the filing of a complaint with the lead Agency; and
  - (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy agencies, and other appropriate entities, The State procedures under §§ 303.422 through 303.434.
- (b) Remedies for denial of appropriate services.

In resolving a complaint in which the lead agency has found a failure to provide appropriate services, the lead agency, pursuant to its general supervisory authority under Part C of IDEA, must address:

- (1) The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and
- (2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

#### **Minimum State Complaint Procedures Section 303.433**

- (a) Time limit; minimum procedures

Each lead agency must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 303.434 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) Provide the lead agency, public agency or EIS provider with an opportunity to respond to the complaint including at a minimum.**
  - (i) At the discretion of the lead agency, a proposal to resolve the complaint; and**
  - (ii) An opportunity for a parent who has filed a complaint and the lead agency, public agency or EIS provider to voluntarily engage in mediation consistent with §§ 303.430 (b) and 303.431.**
- (4) Review all relevant information and make an independent determination as to whether the lead agency, a public agency, or EIS provider is violating a requirement of part C of the act of this part; and**
- (5) 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 procedure described in paragraph (a) of this section also must;**

- (1) Permit an extension of the time limit only if**
  - (i) Exceptional circumstances exist with respect to a particular complaint.**
  - (ii) The parent (or individual or organization, if mediation is available to the individual or organization under State procedures) and the lead agency, public agency or EIS provider involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(i) of this action; and**
- (2) Include procedures for effective implementation of the lead agency’s final decision if needed, including**
  - (i) Technical assistance activities,**
  - (ii) Negotiations;, and**



- (4) If alleging violations with respect to a specific child.**
  - (i) The name and address of the resident of the child**
  - (ii) The name of the EIS provider serving the child**
  - (iii) A description of the nature of the problem of the child, including facts relating to the problem; and**
  - (iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.**
- (c) The complaint must allege a violation that occurred not more than one year before the date that the complaint is received in accordance with § 303.432.**
- (d) The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the lead agency.**

### **Part C Due Process Hearing Procedures**

#### **Appointment of an impartial due process hearing officer Section 303.435**

- (a) Qualifications and duties.**
  - (1) Have knowledge about the provisions of this part and the needs of, and early intervention services available for infants and toddlers with disabilities and their families; and**
  - (2) Perform the following duties;**
    - (i) (A) Listen to the presentation of relevant viewpoints about the due process complaint,**
    - (B) Examine all information relevant to the issues,**
    - (C) Seek to reach a timely resolution of the due process complaint.**
    - (ii) provide a record of the proceedings, including a written decision.**
- (b) Definition of impartial**



**Impartial means that the due process hearing officer appointed to implement the due process hearing under this part:**

- i. Is not an an employee of the lead agency or an EIS provider involved in the provision early intervention services or care of the child.**
- ii. Does not have personal or professional interest that would conflict with his or her objectivity in implementing the process.**
- iii. A person who otherwise qualifies to conduct an impartial due process hearing pursuant to Part C shall not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this part.**

**Parental rights in due process hearing procedures  
Section 303.436**

- (a) General. Each lead agency must ensure that the parents of a child referred to Part C are afforded the rights in paragraph (b) of this section in the due process hearing carried out under § 303.430 (d).**
- (b) Rights. Any parent involved in a due process hearing has a right to:**
  - (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for eligible infants and toddlers with disabilities;**
  - (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;**
  - (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) calendar days before the hearing;**
  - (4) Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and**
  - (5) Receive a written copy of the findings of fact and decisions at no cost to the parent.**

**Convenience of hearings and timelines  
Section 303.437**

- (a) Any due process hearing conducted under this subpart must be carried out at a time and place that is reasonably convenient to the parents.**
- (b) Each lead agency must ensure that not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required under this subpart I completed and a written decision mailed to each of the parties.**
- (c) A hearing officer may grant specific extensions of time beyond the period set out in this paragraph of this section at the request of either party.**

**Civil Action  
Section 303.438**

**Any party aggrieved by the findings of and decision as a result of an impartial due process hearing has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.**