



A Family's Guide Through Procedural Safeguards

UNDERSTANDING YOUR RIGHTS, OPPORTUNITIES
AND RESPONSIBILITIES UNDER THE
FIRST STEPS EARLY INTERVENTION SYSTEM
December 2008



A Family's Guide Through Procedural Safeguards

UNDERSTANDING YOUR RIGHTS, OPPORTUNITIES
AND RESPONSIBILITIES UNDER THE
FIRST STEPS EARLY INTERVENTION SYSTEM

December 2008

Dear Family Member,

Every family participating in the First Steps Early Intervention System has certain rights, and rules have been written to protect these rights. The rules are called Procedural Safeguards. You are encouraged to know and understand these rules so that you can be a supporter for your child/family. Therefore, the Bureau of Child Development Services within the Division of Disability and Rehabilitative Services (DDRS) in the Family and Social Services Administration must make sure that the rules are available to every family participating in the First Steps Early Intervention System.

Two documents have been written to explain to you the procedural safeguards and due process regulations (laws that allow you to make a complaint or ask for a hearing). They are: *A Family's Guide Through Procedural Safeguards* and the *Families Always Have Rights* brochure. Service coordinators are required by law to give you these documents when you enter First Steps, and they must review them with you whenever you are making key decisions about your child's and family's services while you are in First Steps.

A Family's Guide Through Procedural Safeguards contains both the state and federal rules about the procedural safeguards. The actual Indiana rules are in *italics*, followed by a short explanation of what they mean to you. At the end of the guide in the appendix is a list of the federal regulations. A second document, *Families Always Have Rights*, lists your rights in the First Steps System. You are encouraged to refer to both documents whenever you have questions or concerns. These documents are yours. You can write notes or highlight parts to help remind you of important things that you may want to look at later.

Your Service Coordinator is always available to explain these rules and rights and/or to help you during your First Steps experience. Your Service Coordinator's name and contact information are listed below.

Name of SC _____

Telephone _____ Email _____

Table of Contents

1. Development of Procedural Safeguards	1
2. Native Language.....	1
3. Parental Consent.....	2
4. Personally Identifiable Information	4
5. Confidentiality Of Personally Identifiable Information.....	5
6. Prior Notice: Native Language.....	6
7. Notice To Parents.....	8
8. Record Of Access; Multiple Records; Location.....	10
9. Safeguards.....	11
10. Destruction Of Information.....	11
11. Opportunity To Examine Records.....	12
12. Amendment Of Records As Parent's Request.....	13
13. Opportunity For And Result Of Hearing.....	14
14. Enforcement.....	15
15. Surrogate Parents.....	16
Appendix A.....	19
Appendix B.....	21
Appendix C.....	27

1. Development Of Procedural Safeguards

Sec. 3 The division shall be responsible for the development of procedural safeguards and ensuring effective implementation of procedural safeguards by each service provider. (Division of Family and Children; 470 IAC 3.1-13-3)

What this Means for You

It is the responsibility of the Bureau of Child Development Services to make sure that procedural safeguards are developed and that materials are available to families and providers that assist you in understanding and using these rights. In addition to these written materials, this responsibility also includes providing training for parents and service providers in procedural safeguards so everyone knows about these requirements.

2. Native Language

Sec. 1 (a) As used in this rule, "native language": where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible for early intervention services. (Division of Family and Children; 470 IAC 3.1.13-1)

What this Means for You

Your 'native' language means the language you use as your primary way of communicating. For most families, the native language is English. However, if you speak another language, the First Steps System must make sure that you understand everything that is happening so that you make informed decisions about services for your family and your child. This means that we provide some printed materials in languages other than English. In all cases, your Service Coordinator is responsible for making sure that you understand everything either by speaking your language or using a translator. If your primary way of communication is through the use of sign language or the use of Braille, your Service Coordinator will make sure that these forms of communication are available to you throughout your participation in the First Steps System.

If you speak English, but aren't always sure that you understand things clearly, ask your Service Coordinator to arrange for someone to help you. There is no cost to you for these translation services.

While the First Steps System is not required to put all written materials into languages other than English, they are required to work with you to make sure that you fully understand everything that is happening. You may also ask for a family member or friend to work with you.

3. Parental Consent

Sec. 4.

- (a) *Informed, written parental consent must be obtained before:*
 - (1) *conducting the initial evaluation and assessment of a child; and*
 - (2) *initiating the provision of early intervention services.*
- (b) *If consent is not given by the parent, the service coordinator shall make reasonable efforts to ensure that the parent:*
 - (1) *is fully aware of the nature of the evaluation and assessment or other services that would be available; and*
 - (2) *understands that the child will not be able to receive the evaluation and assessment or other services, unless consent is given.*
- (c) *The parent of a child eligible for early intervention services may determine whether the parent, the child, or other family members will accept or decline any early intervention service, and may decline such a service after first accepting it, without jeopardizing other early intervention services. (Division of Family Resources; 470 IAC 3.1-13-4)*

What this Means for You

Your consent is required for all major activities conducted with, for, and on behalf of your child and family. Consent means that you agree to the action and you can give consent in one of two ways. The first is through your informed, written consent. Written consent means signing your signature on a specific form that states exactly to what you are agreeing. The second way is through informed consent which does not have to be in writing. This means that someone, usually your Service Coordinator, has talked with you about some changes to be made and you agree.

Your consent is "informed" when:

- You have been told all of the information available about the decision or activity that you need to provide consent for. This information should have been communicated in your native language or another way of communication that you can best understand.
- You understand and agree, in writing, to the proposed activity. The consent that you sign must describe in writing what is going to happen and when. If the consent is related to the release or collection of information, the consent form that you sign must state the individual with whom information will be shared and exactly what information will be shared.
- You understand that your consent is voluntary; no one is forcing or intimidating you to sign a form or give oral consent to this activity. You can change your mind at any time.

At all points in the early intervention process, informed consent ensures that you understand what is happening before you give consent and before anything is changed.

Minimally, you must give written, informed consent before any activities are conducted to determine if your child is eligible for First Steps services. Activities requiring consent include assessments for service planning and development of the IFSP. Consent must also be given before any services are provided for your child and/or family by the First Steps Early Intervention System.

As legal guardian for your child, you have the following rights in each of these key decision-making points of the early intervention system.

The right to refuse evaluations for eligibility determination, assessment services, and early intervention services.

If you decline services at any point in the IFSP process, the intake/service coordinator must ensure that you understand what the implications of your decision are and that you are aware of the options available to you, including how to contact First Steps in the future should you want to do that.

The right to be invited to, attend, and fully participate in all meetings in which a decision is expected to be made regarding a proposal to change the eligibility (identification and evaluation), where or how your child receives services (placement), or the actual provision of services to your child/family.

Decisions should be made with your active, informed participation. Teams must work together to meet the needs of the family. It is very important to set up meeting times and locations so that family participation is ensured. At all times in the service planning, delivery and evaluation process, families must be visibly and actively involved.

These meetings must occur when an IFSP is being developed or evaluated, eligibility determination (or redetermination) activities, and when services may be changed. Changes include adding or stopping a service.

The right to receive written timely notice before a change is made or refused in the identification, evaluation, or in placement of the child, or in the provision of services to the child or family;

You will review and plan activities for your child and family with your Service Coordinator and early intervention providers. Release of information and consent forms will be signed at the appropriate times. Even though these safeguards are in place, written notice must be provided at key points in the process to ensure that you have been adequately informed and understand what is being proposed and understand your options. Even when you have been actively involved in all of the planning activities, you must receive a ten (10) day written prior notice. This notice period gives you an opportunity to review and reflect on all proposed changes to the IFSP. If you change your mind during this time, you should contact your Service Coordinator.

The formal 10 day written notification of the decision-making activities related to assessment/evaluation for eligibility determination and the initiation of new or changed IFSP services is mandated by state and federal law. This notice cannot be waived even if you and the IFSP team agree with the plan.

4. Personally Identifiable Information

Sec. 1

(b) As used in this rule, "personally identifiable" means information that includes any of the following:

- (1) The name of the child, the child's parent, or other family member.
- (2) The address of the child.
- (3) A personal identifier, such as the child's or parent's Social Security number.
- (4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. (Division of Family Resources; 470 IAC 3.1-13-1)

What this Means for You

The term "personally identifiable information" means anything that would make it possible to identify your child. This includes information such as your child's name, date of birth, your name as parent, or your family's address. It could also include a specific diagnosis or other information, which would make it easy for someone to identify your child without your knowledge. As participants in First Steps, any personally identifiable information must be protected and kept confidential. In addition to state, federal and SPOE staff, only those people who have your written consent will be permitted access to information about your child and family. Protected or confidential information includes all aspects of eligibility, the services that you receive through your IFSP, or any other issue relating to your participation in the First Steps System.

5. Confidentiality Of Personally Identifiable Information

Sec. 6 (a) Except as provided in subsection (b), parental consent must be obtained before personally identifiable information is:

- (1) disclosed to anyone other than the officials of the participating agency collecting or using early intervention information; or*
- (2) used for any purpose other than meeting the requirements of the early intervention system.*

(b) The SPOE shall not release information from a child's early intervention record to other participating agencies without parental consent unless authorized under the Family Educational Rights and Privacy Act, codified at 20 U.S.C. 1232g, and the implementing regulations found at 34 CFR 99. Should there be a disagreement between a participating agency and a parent regarding the release of personally identifiable information related to a child, the parent must be provided notice of the right to a hearing conducted in accordance with 34 CFR 99.22 (Division of Family and Children; 470 IAC 3.1-13-6)

What this Means for You

The Family Education Rights and Privacy Act (FERPA) is a federal law that contains important procedural safeguards for all families participating in publicly supported educational services. This law includes early intervention. FERPA entitles you to confidentiality of information, the ability to review and request amendments to your child's early intervention record, and the responsibility to manage the distribution of information properly. This includes obtaining your informed, written consent about the kind of information, the specific source or receiver of information, the manner in which the information will be shared, and the period of time for information sharing. All early intervention providers participating under this program are responsible for enforcing the provisions of FERPA for you and your child. In maintaining the early intervention record, the intake or service coordinator makes sure that files are kept in a secure location. Documents which were created before your child was referred to First Steps could become part of this early intervention record and are protected under the Family Educational Rights and Privacy Act (FERPA).

Anyone wishing to view any documents contained within this early intervention record must have your prior, written, and informed consent. You may ask to review your child's EI record often and ask for copies of documents for your own records.

If your child's EI record has reports which were developed before your child's referral to First Steps, you may look at these documents in your child's EI record. However, First Steps is not permitted to copy and distribute these reports to anyone. Sometimes, to avoid this restriction, family members often request copies of these kinds of reports or documents and give them to their intake or service coordinator for filing in their child's EI Record. When obtained from the parent, these reports can be copied and given to others as long as prior, informed and written consent is completed.

6. Prior Notice: Native Language

Sec. 2.

(a) *Written notice must be given to the parent of a child eligible for early intervention services at least ten (10) days before an early intervention service provider proposes, or refuses, to initiate or change:*

- (1) the identification, evaluation, or placement of the child; or*
- (2) 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 about the following:*

- (1) The action that is being proposed or refused.*
- (2) The reasons for taking the action.*
- (3) All procedural safeguards that are available.*
- (4) The state complaint procedures under sections 470 IAC 3.1-14-1, including a description of how to file a complaint and the timelines under those procedures.*

(c) *The notice must be written in language understandable to the general public and provided in the native language of the parent unless it is clearly not feasible to do so.*

(d) *If the native language or other mode of communication of the parent is not a written language, the service coordinator shall take steps to ensure the following:*

- (1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication.*
- (2) The parent understands the notice.*
- (3) There is written evidence that the requirements specified in this section have been met.*

(e) *If a parent is deaf or blind or has no written language, the mode of communication must be that normally used by the parent, such as sign language, braille, or oral communication. (Division of Family Resources; 470 IAC 3.1-13-2)*

What this Means for You

At a minimum, you will be informed, both verbally and in writing, of your rights, opportunities and responsibilities at key points throughout the early intervention system. Information must be given to you in a way that makes sense to you so that you can use it. If English is not the language you use most often, or if you have a disability which results in difficulty reading or hearing, these rights must be provided for you in different ways to be sure that you understand. Your Service Coordinator should discuss these rights with you each time a decision is to be made about your child's eligibility for services, the IFSP services themselves, or as the time approaches when your child will be leaving the First Steps System and transition activities are being planned.

Written prior notice must be given to you at least ten (10) calendar days before a meeting will be held to discuss:

- 1) your child's eligibility for services,
- 2) your Individualized Family Service Plan (IFSP), or
- 3) substantial changes to your child's services.

Each notice must completely state the action or event that is being proposed and give reasons why this action is being recommended. The purpose of the notice is to ensure that you know what is being proposed and can make an informed decision as your child's legal guardian. Nothing beyond what is said in the notice can be formally acted upon during this meeting:

Your rights in the First Steps System are summarized in the Families Always Have Rights brochure as follows:

1. Families have the right to a timely evaluation by a multidisciplinary team.
2. Eligible families have the right to a coordinated plan (IFSP) that identifies appropriate early intervention services for the child and family.
3. Families have the right to consent to and refuse evaluations, assessments, and services.
4. Families have the right to prior notice before a change is made or refused in the identification, evaluation, or placement of the child or in the provision of services to the child or family.
5. Families have the right to privacy and confidentiality.
6. Families have the right to review and correct early intervention records.
7. Families have the right to participate in the IFSP meeting.
8. Families have the right to understand First Steps information that is provided to them.
9. Families have the right to an advocate.
10. Families have the right to disagree and may use the complaint, mediation, and due process hearing procedures to seek a timely resolution.

7. Notice To Parents

Sec. 7.

(a) *Participating agencies shall provide notice that is adequate to fully inform parents about the following:*

(1) *A description of the extent that the notice is given in the native languages of the various population groups in the state.*

(2) *A description of:*

(A) *the children on whom personally identifiable information is maintained;*

(B) *the types of information sought;*

(C) *the methods the participating agencies intend to use in gathering the information, including the sources from whom information is gathered; and*

(D) *the uses to be made of the information.*

(3) *A summary of the policies and procedures that participating agencies must follow regarding:*

(A) *storage;*

(B) *disclosure to third parties;*

(C) *retention; and*

(D) *destruction; of personally identifiable information.*

(4) *A description of all of the rights of parents and children regarding the information described in this section, including the rights provided through the Family Educational Rights and Privacy Act and the implementing regulations in 34 CFR 99.*

(b) *Before any major identification, location, or evaluation activity, the notice identified in subsection (a) must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity. (Division of Family Resources; 470 IAC 3.1-13-7)*

What this Means for You

The SPOE and intake/service coordinator ensure the protection of any personally identifiable information collected and/or used. The parents/legal guardians also have the right to receive prior written notice of and provide written consent to the exchange of such information among agencies. The specific procedures that are used locally must meet all applicable federal and state regulations. At the local level, procedures should be developed that include:

- How each family's native or primary language/mode of communication is reflected in brochures, notices and ongoing communications;
- How the SPOE and state use various information with assurances that the confidentiality of this information is always protected;
- How all of the records regarding early intervention services are made available to others; what the process of record storage and destruction is; and
- A written description of all the rights of parents/legal guardians and children regarding this information including the rights under Section 438 of the General Education Provisions Act and Part 99 of the Family Educational Rights and Privacy Act of 1974 and implementing regulations.

As family members, you are assured that any information which could identify your individual child or family will not be kept beyond the local agency collecting it and will not be held by any state-level agency except to the extent necessary to carry out this law. Print information is kept in your child's early intervention record, and some information is electronically stored. Information that is stored on this electronic file is identified on the hardcopy documents with an asterisk (*). Both files are available for your review.

You can ask your Service Coordinator how to view this electronic record.

Only certain individuals can access your child's EI record. You must sign a release consenting to the sharing of information with certain providers. This release will identify the specific types of information that you have authorized to be shared. These releases are reciprocal, or "two-way". This means that the First Steps System and the identified provider can communicate with one another regarding whatever specific information you have authorized.

Information for various federal and state reporting requirements is collected under strict confidentiality. This information is reported without the use of child names or other forms of personal identification.

8. Record Of Access; Multiple Records; Location

Sec. 9.

(a) Each SPOE shall keep a record of authorized parties obtaining access to early intervention records collected, maintained, or used by the SPOE, except access by parents and authorized employees of the SPOE, including:

- (1) the name of the party requesting access;*
- (2) the date access was given; and*
- (3) the purpose for which the party is authorized to use the records.*

(b) If any record includes information on more than one (1) child, the parent of that child has the right:

- (1) to inspect and review only the information relating to his or her child; or*
- (2) to be informed of that specific information.*

(c) Each SPOE shall provide a parent, upon request, a list of the types and locations of early intervention records collected, maintained, or used by the SPOE. (Division of Family Resources; 470 IAC 3.1-13-9)

What this Means for You

If anyone wants access to your child's EI record, there must be a signed release from you authorizing this access. An access log is kept in each child's file indicating by signature, date, and purpose any and all access to the early intervention record by individuals who are not employees or contractors of the System Point of Entry. When you go to view your child's file, you will always be able to check this log and know who has reviewed your child's record and why.

9. Safeguards

Sec. 12.

(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One (1) official of each participating 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 personally identifiable information.

(d) Each participating 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. (Division of Family Resources; 470 IAC 3.1-13-12)

What this Means for You

Early Intervention records must be protected at all times. The SPOE maintains a primary person whose responsibility includes ensuring confidentiality. All SPOE staff and providers are trained in these procedures. At the location of the Early Intervention record, a listing of persons who have access must be posted.

10. Destruction Of Information

Sec. 13. The SPOE shall maintain a child's early intervention records for at least five (5) years after the child leaves the early intervention system unless the family requests the destruction of the records prior to that time. (Division of Family Resources; 470 IAC 3.1-13-13)

What this Means for You

All early intervention records will be maintained for a period of five (5) years after your child's discharge from the program. If there is a complaint or audit investigation with respect to the individual record, the record may not be destroyed until the matter is resolved. When records are to be destroyed, the local First Steps SPOE will contact you first to see if you want to take possession of the record. This contact must be made in a timely manner, and must inform you that the record will be destroyed should you decide not to claim it. All records will be destroyed in such a manner as to protect confidentiality of all personally identifiable information (such as shredding).

However, a permanent record will be kept containing directory information. This information could include the child's name, date of birth, parents' names, and the dates of service/enrollment. The record must be maintained without time limitation by the local First Steps SPOE. This directory is a federal requirement under FERPA. It serves to document that a child was served even after the formal record is destroyed.

11. Opportunity To Examine Records

Sec. 8.

(a) The parent of a child eligible for early intervention services must be afforded the opportunity to inspect and review records relating to:

- (1) evaluations and assessments;*
- (2) eligibility determinations;*
- (3) development and implementation of IFSPs;*
- (4) individual complaints dealing with the child; and*
- (5) any other early intervention records about the child and the child's family.*

(b) All participating agencies shall permit a parent to inspect and review all early intervention records relating to his or her child collected, maintained, or used by any participating agency, without unnecessary delay, prior to holding the IFSP meeting or any meeting related to:

- (1) the child's identification, evaluation, assessment; or*
- (2) the provision of needed services; and, in no case, more than forty-five (45) days after the request has been made.*

(c) The right to inspect and review early intervention records includes the following:

- (1) The right to a response from a participating agency to reasonable requests for explanations and interpretations of a child's early intervention records.*
- (2) The right of a parent to request that the participating agency provide copies of records containing information concerning the child or the child's family, if the failure to provide copies would effectively prevent the parent from exercising the right to inspect and review the records.*
- (3) The right of a parent to have a representative of the parent inspect and review the records.*

(d) The SPOE or service provider may presume that a parent has authority to inspect and review records relating to his or her child unless the SPOE has been advised that the parent does not have the authority under applicable state law or court order. (Division of Family Resources; 470 IAC 3.1-13-8)

What this Means for You

Each System Point of Entry (SPOE) or participating service provider shall permit you to inspect and review any early intervention records relating to your child which are collected, maintained or used by the agency under this part within 45 days of a request to review. The right to inspect and review records under this section includes:

- The right to a response to your reasonable requests for explanation and interpretation of the records.
- The right to request copies of the records containing the information.
- The right to have your representative inspect and review the records.

These rights apply to the clinical record maintained by each individual EI provider, as well as, to the EI record maintained and available through the local SPOE.

Each System Point of Entry or provider shall permit you to inspect and review records as quickly as possible but not more than 45 days after the request has been made. If you are asking to see the records to help you prepare for an IFSP Team meeting or eligibility review, you must be permitted to review these records within a reasonable period of time so that the IFSP meeting or eligibility determination is not compromised.

You have a right to request a reasonable explanation and interpretation of any records. The intake/service coordinator is responsible for ensuring that this occurs in a timely and comprehensive manner.

12. Amendment Of Records As Parent's Request

Sec. 10.

(a) A parent who believes information in his or her child's early intervention records is inaccurate or misleading, or violates the privacy or other rights of the child, may request the SPOE maintaining the records to amend the information.

(b) The SPOE 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 forty-five (45) days from the receipt of the request.

(c) If the SPOE decides to refuse 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, in accordance with 470 IAC 3.1-15 regarding the refusal.

(Division of Family Resources; 470 IAC 3.1-13-10)

What this Means for You

If you feel that the information contained in the early intervention record is inaccurate, misleading or discriminatory in some manner, you may request in writing that this information be either removed or rewritten to more accurately reflect your child. After considering this request, the SPOE or a participating provider may grant or deny the request. If the request is granted, the offending material is removed from the early intervention record and replaced with material agreed to by both parties.

13. Opportunity For and Result Of Hearing

Sec. 11.

(a) Participating agencies shall, on request, provide a parent the opportunity for a hearing, in accordance with 470 IAC 3.1-15, to challenge information contained in his or her child's early intervention records that the parent believes is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(b) If, as a result of a hearing, it is determined that the information is inaccurate, misleading, or violates the privacy or other rights of the child, the participating agency shall amend the information accordingly and inform the parent in writing.

(c) If, as a result of a hearing, it is determined that the information is not inaccurate, misleading, or violates the privacy or other rights of the child, the participating agency shall inform the parent of the right to place in the child's records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the participating agency. Any explanation placed in the child's records must:

(1) be maintained by the participating agency as part of the records of the child, as long as the records or the contested portion is maintained by the participating agency; and

(2) be disclosed, if the records of the child are, or the contested portion is, disclosed by the participating agency to any party.

(d) Any hearing held under this section must be conducted in accordance with the procedures mandated by the Family Educational Rights and Privacy Act and 34 CFR 99.22. (Division of Family Resources; 470 IAC 3.1-13-11)

What this Means for You

If the request to amend your child's record is denied, you may proceed to file a written request for a hearing and/or mediation. As an alternative, however, you may develop a written statement correcting or changing the material at question and request that this be placed in your child's early intervention record.

All documentation related to information requests must be maintained in the early intervention record, even if the information is changed or purged as requested by the family. There must be written documentation of all record activities, including information alteration, destruction or purging.

14. Enforcement

Sec. 14.

(a) The LPCC and the division shall collect and maintain information. The division shall ensure that all requirements governing the confidentiality of records and early intervention information maintained by participating agencies are being implemented by the participating agencies.

(b) In the event that compliance deficiencies are identified, the division shall report the deficiency, in writing, to the responsible participating agency. This report shall:

(1) describe the unmet requirement or requirements leading to the deficiency;

(2) specify the action necessary to correct the deficiency; and

(3) establish a timeline for implementing the corrective action. (Division of Family Resources; 470 IAC 3.1-13-14)

(c) If corrective action is not taken, and if further assistance from appropriate enforcement personnel is unsuccessful in remedying the deficiency, the division retains the option of initiating procedures to:

(1) stop further federal and state financial support to the offending service provider; and

(2) require refund payments of monies already provided to the participating agency through the state, from state and federal sources. (Division of Family Resources; 470 IAC 3.1-13-14)

What this Means for You

The Division of Disability and Rehabilitative Services is responsible for monitoring the implementation of procedural safeguards for families participating in the First Steps System. A process exists which will identify violations of families' procedural safeguards and rights. Corrective action plans will be issued to agencies/individual providers. As a last resort, funding can be withheld or payments already received may be rescinded in instances of continued flagrant violations.

15. Surrogate Parents

Sec. 5.

- (a) The division shall be responsible to ensure that the rights of children eligible for early intervention services are protected if:*
- (1) no parent can be identified;*
 - (2) the SPOE, after reasonable efforts, cannot discover the whereabouts of a parent; or*
 - (3) the child is a ward of the state.*
- (b) The division, in cooperation with the LPCC, shall be responsible for the development of policies and procedures for determining whether a child needs a surrogate parent and for assigning a surrogate parent for the child. Such policies and procedures shall ensure that a person selected as a surrogate parent:*
- (1) has no interest that conflicts with the interests of the child he or she represents; and*
 - (2) has knowledge and skills that ensure adequate representation of the child.*
- (c) A person assigned as a surrogate parent may not be any of the following:*
- (1) An employee of the division.*
 - (2) An employee of any state agency.*
 - (3) An employee of any entity providing early intervention services to the child or to a family member of the child. A person who otherwise qualifies to be a surrogate parent shall not be considered an employee of an agency solely because he or she is paid by the agency to serve as a surrogate parent.*
- (d) A surrogate parent may represent a child in all matters related to the following:*
- (1) The evaluation and assessment of the child.*
 - (2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews.*
 - (3) The ongoing provision of early intervention services to the child.*
 - (4) Any other rights established under Part C of the Act and the implementing regulations in 34 CFR 303. (Division of Family Resources; 470 IAC 3.1-13-5)*

What this Means for You

A "surrogate parent" must be identified and assigned for all children eligible where the natural parent cannot be located or identified, or when the child is a ward of the State. Each Local Planning and Coordinating Council (LPCC) must have local procedures in place for determining whether a child needs a surrogate parent/legal guardian, and they must have a method for assigning a surrogate parent/legal guardian to the child. The LPCC is also responsible for recruiting individuals to be surrogate parents and assisting them to become trained and supported in this role. Surrogate parents/legal guardians are appointed for a child who is suspected of being or determined to be eligible for the First Steps System when:

- No individual who has been allowed to act as a parent/legal guardian by the natural parent(s) or legal guardian(s) can be identified.
- The LPCC or System Point of Entry cannot locate a parent/legal guardian.
- Legal custody of the child and all parental/legal guardian rights and responsibilities for the care and custody of the child have been terminated by Court order or permanent legal agreement.
- The child is a ward of the State under the laws of that State.

Depending upon the situation for an eligible child, the appointment of a surrogate parent may be terminated or changed. In appointing a surrogate parent, the following considerations should be made:

- The appointment of a relative who has the knowledge and skills to represent the child adequately and to serve as surrogate parent/legal guardian.
- The appointment of a foster parent who has the knowledge and skills to represent the child adequately.
- The specific racial, cultural, and linguistic needs of the child.
- Is trained in being a surrogate parent and has no conflict of interest in performing these responsibilities. This individual may not be an employee of any agency involved in the provision of early intervention or other services to the child or to the child's family. The LPCC must ensure that this individual receives in-service training in regard to provisions of the First Steps System.

The activities and obligations of the surrogate parent are restricted to those related only to the implementation of early intervention for the eligible child. If a child is under the care or supervision of the State, the surrogate parent may not be confused with the state-assigned child case worker. The child case worker is responsible, under State law, for the obligations of the department as custodial parent. In these instances it is not permissible by federal law for the case worker to also serve as the surrogate parent. It is imperative that the surrogate parent communicate regularly with the case worker regarding activities and events, and work together for the benefit of the child. The case worker should be kept fully informed of all relevant activities and commitments made on behalf of the eligible child by the surrogate parent.

Appendix A

Public Law 108-446, December 3, 2004. Individuals with Disabilities Education Act (IDEA), Title 1, Part C-Infants and Toddlers with Disabilities, Section 639-Procedural Safeguards

Statute: TITLE I / C / 639

Sec. 639 PROCEDURAL SAFEGUARDS.

(a) Minimum Procedures.-the procedural safeguards required to be included in a statewide system under Section 635(a)(13) shall provide, at a minimum, the following:

(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of

the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

(8) The right of parents to use mediation in accordance with section 615, except that-

(A) Any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

(B) Any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and

(C) Any reference in the section to the provision of a free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

(b) Services During Pendency of Proceedings.-During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

Appendix B - Sample Letters

How to Refer Your Child

(Insert Date)

Bureau of Child Development Services
402 W. Washington Street
Room W-386, MS-02
Indianapolis, IN 46204

To Whom It May Concern:

I would like to refer my child, (child's name), to the First Steps Early Intervention System. My child is (age of child) and appears to have problems in his/her development. I understand that I will be contacted by an intake coordinator who will explain the program to me.

Please call me at (insert phone number including area code). The best time to reach me is on (insert days and times).

Sincerely,

(Insert Name)
(Street Address)
(City/State/Zip Code)

How to Make a Systems Complaint

(Insert Date)

Complaint Coordinator
First Steps Early Intervention Program
402 W. Washington Street
Room W-386, MS-02
Indianapolis, IN 46204

Dear Complaint Coordinator:

I would like to file a complaint because I believe that (name and address of person/agency) is/are not performing their works as the law requires. I would like the First Steps Early Intervention System to investigate the following actions: (statement of charges).

I understand that my complaint will be investigated within 60 days and that I may be interviewed and will receive a copy of the final report.

Please call me at (insert phone number including area code). The best time to reach me is on (insert days and times).

Sincerely,

(Insert Name)
(Street Address)
(City/State/Zip Code)

How to Ask to Review Your Child's Records

(Insert Date)

(Insert System Point of Entry Name)

(Street Address)

(City/State/Zip Code)

Dear (Insert System Point of Entry Name):

I would like to review the records of my child, (child's name), who is receiving early intervention services from (name/s of service providers).

I understand that if I have questions, I can have information in the record explained to me, and/or I can choose someone on my behalf to review my child's records.

Please contact me at (insert phone number including area code). The best time to reach me is on (insert dates and times).

Sincerely,

(Insert Name)

(Street Address)

(City/State/Zip Code)

How to Request Mediation

(Insert Date)

Part C Coordinator
402 W. Washington Street
Room W-386, MS-02
Indianapolis, IN 46204

Dear Part C Coordinator:

I would like to request mediation. I am concerned about the identification, evaluation, or placement of my child, (child's name), in regard to early intervention services that my child is receiving or should be receiving.

I understand that someone will contact me to make arrangements. Please call me at (insert phone number including area code). The best time to reach me to arrange a reasonable, convenient time, place, and date for the hearing is on (insert days and times).

Sincerely,

(Insert Name)
(Street Address)
(City/State/Zip Code)

How to Request an Impartial Hearing

(Insert Date)

Part C Coordinator
402 W. Washington Street
Room W-386, MS-02
Indianapolis, IN 46204

Dear Part C Coordinator:

I would like to request an impartial hearing regarding the identification, evaluation, or placement of my child, (child's name), in regard to early intervention services.

Please call me at (insert phone number including area code). The best time to reach me to arrange a reasonable, convenient time, place, and date for the hearing is on (insert days and times).

Sincerely,

(Insert Name)
(Street Address)
(City/State/Zip Code)

Appendix C

First Steps Complaint Procedures

It is the intent of the Indiana Family and Social Services Administration, Division of Disability and Rehabilitative Services, Bureau of Child Development Services (herein after referred to as the "Division") to address or otherwise investigate all complaints submitted in writing. Further, it is the policy of the Division to monitor implementation of all orders issued as a result of complaint investigations and to take actions necessary to ensure compliance.

These complaint procedures will be implemented when the Division receives a written signed letter of complaint from either an individual or an organization which contains: a) an allegation that the State, local public agency or other provider has violated a requirement of a Federal and/or State statute, regulation, or rule that applies to an early intervention program; and b) the basis for the allegation. A complaint investigation may also be initiated when the Division is apprised of or discovers violations of Federal and/or State laws, rules, or regulations regardless of how such allegations are made or presented.

Clarification

A complainable issue is addressed at 34 C.F.R. Part 303.510 as an alleged violation of a requirement of Part C of the Individuals With Disabilities Education Act or the implementing regulations, and is resolved through the complaint process.

A hearing issue is addressed at 34 C.F.R. Part 300.420 -425 as a dispute within the IFSP conference committee in proposing to or refusing to initiate or change the identification, evaluation, or placement of the child or the provision of a Free and Appropriate Public Education (FAPE) to the child, and is resolved through the procedures of due process.

If a signed letter of complaint received by the Division contains both complainable and hearing issues, the complaint coordinator will contact the complainant by phone. If the complainant is the parent or legal guardian of the child, they will be given the opportunity to choose both the complaint and hearing processes or to choose one or the other. If the issues are separated, the hearing issues will be assigned to an independent hearing officer (IHO) and the complainable issue will

	<p>be assigned to a complaint investigator unless the IHO assumes the issues as part of the hearing.</p> <p>If an individual requests a complaint investigation on an IFSP conference committee dispute and does not wish to pursue a due process hearing, the complaint investigation will proceed. The complaint investigator will only determine whether the participating agency has procedures in place, and implements those procedures, which are likely to ensure compliance with Federal and/or State laws, rules, or regulations as specified by 34 CFR, Part 303.510. A complaint investigator cannot serve as an impartial IHO, nor may the complaint process substitute for a due process hearing.</p>
<p>Authority: Federal Regulations 34 CFR 303.510- 512 (IDEA)</p>	<p>The authority for both the above-stated policy and the written procedures that follow are found at 34 CFR 303.510 and 470 IAC 3.1.</p> <p>Section 303.510 Adopting complaint procedures.</p> <p>(a) Each Lead Agency shall adopt written procedures for:</p> <p>(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that any public agency or private service provider is violating a requirement of Part C of the Act or this part by</p> <p>(i) providing for the filing of a complaint with the lead agency; and</p> <p>(ii) at the Lead Agency's discretion, providing for the filing of a complaint with a public agency and the right to have the lead agency review the public agency's decision on the complaint.</p> <p>(2) Widely disseminating to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under 03.510-303.512.</p> <p>Section 303.511 An organization or individual may file complaint.</p> <p>(a) An individual or organization may file a written signed complaint under §303.510. The complaint must include:</p> <p>(1) A statement that the State has violated a requirement of Part C of the Act or the regulations in this part; and</p> <p>(2) The facts on which the complaint is based.</p> <p>(b) The alleged violation must have occurred not more than one year before the date that the complaint is received by the public agency unless a longer period is reasonable because -</p> <p>(1) The alleged violation continues for that child or other children; or</p> <p>(2) The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.</p>

	<p>Section 303.512 Minimum State complaint procedures.</p> <p>(a) Time limit, minimum procedures. Each Lead Agency shall include in its complaint procedures a time limit of 60 calendar days after a complaint is filed under 303.510{a) to</p> <ol style="list-style-type: none"> (1) Carry out an independent on-site investigation, if the Lead Agency determines that such an investigation is necessary; (2) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; (3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part C of the Act or of this part; and (4) issue a written decision to the complainant that addresses each allegation in the complaint and contains - <ol style="list-style-type: none"> (i) Findings of Fact and Conclusion; and (ii) the reasons for the Lead Agency's final decision. <p>(b) Time extension; final decisions; implementation. The lead agency's procedures described in paragraph (a) of this section also must</p> <ol style="list-style-type: none"> (1) Permit an extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint: and (2) Include procedures for effective implementation of the lead agency's final decision, if needed, including <ol style="list-style-type: none"> (i) Technical assistance activities (ii) Negotiations, and (iii) Corrective actions to achieve compliance. <p>Authority: 20 U.S.C. 1476(b)(9), Education Department General Administrative Regulations ("EDGAR") 76.780-81</p>
<p>470 IAC 3.1-14-1 Complaints; violations of law</p>	<p>(a) Any individual or organization may file a complaint against a participating agency alleging violations of federal or state laws, regulations, and rules that apply to the early intervention system.</p> <p>(b) The complaint shall:</p> <ol style="list-style-type: none"> (1) be in writing; (2) indicate the allegations of violation or complainants and the circumstances on which the allegations are based; (3) be signed by the complainant; (4) be submitted to the division no later than one (1) year after the date of the alleged violation, unless: <ol style="list-style-type: none"> (A) a longer period is reasonable because the violation is continuing: or (B) the individual is requesting compensatory services, reimbursement or corrective action for an alleged violation

	<p>that occurred no longer than three (3) years prior to the date the division receives the complaint;</p> <p>(5) indicate the name of the child and the address of the residence of the child: and</p> <p>(6) indicate a proposed resolution of the problem to the extent known and available to the parents at the time.</p> <p>(c) The division, or its designee, shall be responsible for the assignment of an individual to investigate a complaint.</p> <p>(d) Any individual assigned to investigate a complaint shall have knowledge of the early intervention system.</p> <p>(e) The division shall develop a model form to assist parents in filing a complaint and widely disseminate it to parents and other interested individuals.</p> <p>(f) If a complaint is also the subject of a due process hearing under 470 IAC 3.1-15, or contains multiple issues, including due process issues, the division must do the following:</p> <p>(1) Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.</p> <p>(2) Resolve all parts of the complaint that are not part of the due process action within the sixty (60) calendar day timeline described in section 2 of this rule.</p> <p>(g) If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties:</p> <p>(1) The hearing decision is binding; and</p> <p>(2) The division must inform the complainant of the binding decision.</p> <p>Clarification of 470 IAC 3.1-14-1:</p> <p>In October 2008, Office of Special Education Programs (OSEP) staff members were in Indiana for a verification visit. OSEP reviewed policies, procedures, and data related to General Supervision of the First Steps System. In reviewing the Indiana Administrative Code relating to complaints, it was noted that Indiana's rules go beyond the federal requirements by requiring the name and address of the child and by requiring a proposed resolution of the problem to the extent known and available to the parents at the time the complaint is filed. Since these two requirements are more than what is required by federal statute, they should not have been included in Indiana's code. Legislative changes to the Indiana code will occur at a future date. In the meantime, complaints regarding violations of the law do not require the child's name, address, or any proposed resolution of the problem. Please direct any questions regarding this clarification to FirstStepsWeb@fssa.in.gov.</p>
470 IAC 3.1-14-2 Complaint investigator	<p>(a) The complaint investigator shall do the following:</p> <p>(1) Carry out an independent, on-site investigation, if the investigator determines an on-site investigation is necessary,</p>

	<p>including contacting the complainant and the participating agency named in the complaint to clarify the issues if necessary.</p> <p>(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.</p> <p>(3) Review all relevant information and make an independent determination as to whether the participating agency violated, or is violating the laws, regulations, and rules directing the early intervention system.</p> <p>(4) Issue a written decision that addresses each allegation in the complaint, and contains findings of fact and conclusions, and the reasons for the complaint investigator's final decision. The written decision shall be provided to the following:</p> <ul style="list-style-type: none"> (A) The complainant (B) The director or chief executive officer of the participating agency involved. (C) The director of the division <p>(5) Facilitate procedures for effective implementation of the written decision, if needed, including</p> <ul style="list-style-type: none"> (A) technical assistance activities; (B) negotiations; and (C) corrective actions to achieve compliance. <p>(b) The final written response of the complaint investigator shall be issued within sixty (60) days of the date the written complaint is received by the division.</p> <p>(c) An extension of time for issuance of the written decision may be granted by the director of the division, upon request of the complaint investigator, if exceptional circumstances exist with respect to a specific complaint and good cause is shown. In that event, all parties shall be notified, in writing, of any extension and the reasons therefore.</p> <p>(d) Any timeliness for the participating agency to submit a corrective action plan and to achieve compliance shall be included in the complaint investigator's decision. Compliance with orders issued by the complaint investigator shall be monitored by the division and the LPCC.</p>
<p>470 IAC 3.1-14-3 Failure to comply</p>	<p>(a) The failure of the participating agency to comply with orders issued by a complaint investigator may result in the withholding by the state of federal and state funds to the agency.</p> <p>(b) A complaint alleging a participating agency's failure to implement a due process decision must be resolved by the division.</p>

	First Steps Mediation Procedures
	<p>Mediation is a voluntary process which is intended to assist parents and providers in resolving disagreements regarding the provision of services for infants and toddlers eligible under Part C. Mediation is a voluntary process and is a due process option. The mediation session is confidential, opens communication between the parties and encourages problem solving.</p> <p>A trained mediator works with the parent and providers to guide them toward a mutually satisfactory solution that is in the best interest of the child. The mediation session is more structured than a parent provider conference, but less formal than a due process hearing; and is intended to be non-adversarial.</p>
Authority: Federal Regulations 34 CFR 303.419	<p>Note: Many states have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute, a provider may wish to suggest mediation in disputes concerning the identification, evaluation or provision of services to infants and toddlers with disabilities and their families. In many cases, mediation leads to the resolution of differences between parents and providers without the development of an adversarial relationship and with minimal emotional distress. However, mediation may not be used to deny or delay a parent's rights under 303.420-460</p>
470 IAC 3.1-15-9	<p>(a) Mediation is a voluntary option that can be used when a parent and a participating agency cannot agree on matters related to the identification, evaluation, or provision of services to a child or child's family, as an alternative to the procedures found in this rule.</p> <p>(b) Mediation may be requested when both parties agree to the mediation process.</p> <p>(c) Mediation may occur prior to or concurrent with a request for an impartial hearing. A request for mediation shall not preclude or delay an impartial hearing, the timelines required to be met when an impartial hearing is conducted, nor deny any other rights afforded under Part C.</p> <p>(d) Persons who serve as mediators shall:</p> <ol style="list-style-type: none"> (1) be trained in effective mediation techniques; (2) have no conflict of interest concerning the parties or issues involved in the mediation process; (3) be impartial; and (4) have knowledge of the early intervention system and the needs

- | | |
|--|---|
| | <p>of infants and toddlers with disabilities and their families.</p> <p>e) The division shall:</p> <ul style="list-style-type: none"> (1) Maintain a list of qualified mediators. (2) Assure that each session in the mediation process is scheduled in a timely manner. (3) Assure that the location of the scheduled mediation is convenient to the parties in dispute. (4) Bear the cost of the mediation process. <p>(f) A mediation agreement:</p> <ul style="list-style-type: none"> (1) shall not be binding on any party; (2) shall be submitted to the IFSP team for approval; and (3) shall be in writing. <p>(g) Discussions that occur during the mediation process must:</p> <ul style="list-style-type: none"> (1) be confidential; and (2) not be used as evidence in any subsequent due process hearings or civil proceedings. <p>(h) Parties to the mediation must sign a confidentiality pledge prior to the commencement of the process.</p> <p>(i) Where an impartial hearing has been requested and an impartial hearing officer assigned, the mediation agreement shall be submitted, upon request of the hearing officer, to the hearing officer.</p> <p>(j) If a mediation agreement is reached while a petition for review is pending with the division, the agreement shall, upon request of the division, be submitted to the division.</p> |
|--|---|

	First Steps Due Process Hearing Procedures
Due Process Procedures	<p>It is the policy of the Indiana Family and Social Services Administration, Division of Disabilities and Rehabilitative Services, Bureau of Child Development Services, hereafter known as the "Division," to appoint hearing officers for all IDEA (Individuals with Disabilities Act)/Early Intervention due process hearings. Issues of standing and jurisdiction are brought before the hearing officer by motion. Further, it is the policy to monitor implementation of all orders issued as a result of hearings and to take such actions necessary to ensure compliance.</p> <p>Hearing procedures are implemented when a written request is filed with the public agency, or the Division. Hearable issues are identified in IDEA at CFR 303.20 and include disputes between the public agency and the parent regarding identification, evaluation, eligibility, placement of the child and/or the provision of appropriate early intervention services to the child, and the child's family. The hearing officer decides whether an issue(s) is "hearable". Hearings are conducted, decisions written and then mailed to the parties no later than 45 days after the receipt of a hearing request unless an extension is granted by the hearing officer at the request of either party.</p>
Authority: Federal Regulations 34 CFR 303.420-425	Authority for the policy and the procedures regarding due process hearings documented herein is conferred by 470 IAC 3.1-15-1; 34 C.F.R. 303.420-425; IC 12-17-15, and 20 U.S.C. 1415.
470 IAC 3.1-15-1 Rights to an impartial hearing	<p>(a) The parents of an eligible child and a participating agency have the right to initiate an impartial hearing prior to:</p> <ul style="list-style-type: none"> (1) the proposal, or refusal, to initiate or change the: <ul style="list-style-type: none"> (A) identification; (B) evaluation; or (C) placement of a child, or (2) the provision of early intervention services to a child or the child's family. <p>(b) A request for a due process hearing and the appointment of an independent hearing officer shall:</p> <ul style="list-style-type: none"> (1) be in writing and signed; (2) be filed simultaneously with the other parties, and their agents, and the division; and (3) specify the reasons for the hearing request

	<p>(c) Any impartial hearing conducted in accordance with this rule shall be conducted by the impartial hearing officer.</p> <p>(d) All participating agencies shall inform a parent of any free or low cost legal and other relevant services available if:</p> <ol style="list-style-type: none"> (1) the parent request the information; or (2) the parent or participating agency initiates a hearing in accordance with this rule. <p>Clarification: The division will bear costs pertaining to reimbursement of the hearing officer and transcription fees.</p>
470 IAC 3.1-15-2 Impartial hearing officer	<p>(a) The assignment of an impartial officer shall be made by the division or its designee.</p> <p>(b) The person assigned to conduct an impartial hearing must have knowledge about the statutes, regulations and rules directing the early intervention system and the needs of, and services available for, eligible infants and toddlers and their families. The impartial hearing officer shall do the following:</p> <ol style="list-style-type: none"> (1) 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. (2) Provide a record of the proceedings, including a written decision which contains findings of fact and conclusions and the reasons for the decision. <p>(c) A hearing may not be conducted by the following:</p> <ol style="list-style-type: none"> (1) A person who is an employee of a participating agency involved in providing early intervention services or care to the child. (2) A person having a personal or professional interest that would conflict with his or her objectivity in implementing the hearing process. (3) A person who is an employee of the state agency involved the education of the child. <p>(d) A person who otherwise qualifies to conduct a hearing under this rule shall not be considered an employee of a participating agency solely because he or she is paid by the participating agency to implement the complaint resolution process.</p> <p>(e) The division or its designee shall keep a list of the persons available to serve as hearing officers. The list must include information regarding the qualification of each of the hearing officers.</p> <p>(f) The division or its designee shall provide training for hearing officers used to conduct hearings under the rule.</p>
470 IAC 3.1-15-3 Hearing rights	<p>(a) Any party to a hearing conducted under this rule shall have right to the following:</p> <ol style="list-style-type: none"> (1) Disclosure to all other parties of all evaluations and recommendations, based on the offering party's evaluation, that the party intends to use at the hearing, that have been completed by five (5) business days prior to the hearing.

	<p>(2) 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.</p> <p>(3) Present evidence and confront, cross-examine, and compel the attendance of witnesses.</p> <p>(4) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) days before the hearing.</p> <p>(5) Obtain a written or, at the option of the parents, electronic verbatim transcription of the hearing.</p> <p>(6) Obtain written, or at the option of the parents, electronic verbatim transcription, findings of fact, and decisions.</p> <p>(b) Parents involved in hearings have the right to have:</p> <p>(1) the child who is the subject of the hearing present at the hearing; and</p> <p>(2) the hearing open to the public.</p> <p>(c) The division or its designee, after deleting any personally identifying information, shall transmit the findings and decision to the ICC and make the findings and decision available to the public.</p>
470 IAC 3.15-4 Convenience of proceedings	Any proceeding for implementing the impartial hearing process must be carried out at a time and place that is reasonably convenient to the parent of an eligible child.
470 IAC 3.1-15-5 Hearing decision; appeal for impartial review	A decision made in a hearing conducted under this rule is final unless a party to the hearing appeals the decision under Sections 6 and 7 of this rule.
470 IAC 3.1-15-6 Administrative appeal, impartial review	<p>(a) Any party aggrieved by the findings and decision of the impartial hearing officer may appeal to the division.</p> <p>(b) If there is an appeal, the division shall conduct an impartial review of the hearing. The official conducting the review shall do the following:</p> <p>(1) Examine the entire hearing record.</p> <p>(2) Ensure that the procedures at the hearing were consistent with the requirements of due process.</p> <p>(3) Seek additional evidence if necessary.</p> <p>(4) If a hearing is held to receive additional evidence, provide the hearing rights specified in section 3 of this rule.</p> <p>(5) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official.</p> <p>(6) Make an independent decision on completion of the review.</p> <p>(7) Give a copy of the written findings of fact and decision to the parties.</p> <p>(c) The decision made by the reviewing official is final unless a party brings a civil action under section 7 of this rule.</p> <p>(d) The division, after deleting any personally identifiable information, shall do the following:</p>

	<p>(1) Transmit the findings and decisions made under this rule to the ICC.</p> <p>(2) Make those findings and decisions available to the public.</p>
470 IAC 3.1-15-7 Civil action	Any party aggrieved by the findings and decision made in a hearing who does not have the right to appeal under section 6 of this rule, and any party aggrieved by the decision of a reviewing officer under section 6 of this rule, has the right to bring a civil action in any court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.
470 IAC 3.1-15-8 Timelines and convenience of hearings and reviews	<p>(a) The division shall ensure that not later than forty-five (45) days after the receipt of a request for a hearing:</p> <p style="padding-left: 40px;">(1) a final decision is reached in the hearing; and</p> <p style="padding-left: 40px;">(2) a copy of the decision is mailed to each of the parties.</p> <p>(b) Any party dissatisfied with the decision may appeal for an impartial review by the division under Section 6 of this rule. The appeal must be</p> <p style="padding-left: 40px;">(1) in writing, and</p> <p style="padding-left: 40px;">(2) filed simultaneously with the division and the opposing party; and</p> <p style="padding-left: 40px;">(3) filed within thirty (30) calendar days of the date the hearing officer's decision is received by the party.</p> <p>(c) The division shall ensure that not later than thirty (30) days after the receipt of a request for a review:</p> <p style="padding-left: 40px;">(1) a final decision is reached in the review; and</p> <p style="padding-left: 40px;">(2) a copy of the decision is mailed to each of the parties.</p> <p>(d) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in subsection (a) and (b) at the request of either party.</p> <p>(e) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parent and child involved.</p>
470 IAC 3.1-15-10 Status of a child during proceedings	<p>(a) During the pendency of any proceedings involving complaints initiated under this rule, unless the division and the parent of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.</p> <p>(b) If the complaint involves an application for initial services, the child must receive those services that are not in dispute.</p>

