

New Jersey Department of Health-Early Intervention System Family Rights



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NEW JERSEY EARLY INTERVENTION FAMILY RIGHTS

INTRODUCTION:

This handbook describes your child's and family's rights under Part C implementing regulations under the Individuals with Disabilities Education Act (IDEA), 34 CFR 303 and the pertinent sections of the Family Educational Rights Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR Part 99. These laws apply to all aspects of your New Jersey Early Intervention System (NJEIS) services. Any reference to Part C refers to your Early Intervention System services or Part C of the IDEA.

An Individualized Family Service Plan (IFSP) is developed by a team, which includes you, as the parent, other family members if possible, and any individual which you wish to participate to develop outcomes for your child and family. An initial IFSP is developed following a determination of eligibility, and at least every 6 months thereafter. An IFSP may be held sooner if requested.

This handbook is designed for your information. For help and understanding your rights, important contact information has been included for your reference.

IMPORTANT CONTACT INFORMATION:

For help in understanding your rights, you may contact any of the following:

- Department of Health (DOH), NJEIS Procedural Safeguards Office: 609-913-5500 or (877) 258-6585 (Toll Free) Facsimile: 609-292-9599, [Department of Health | Early Intervention \(nj.gov\)](http://Department of Health | Early Intervention (nj.gov))
- Regional Early Intervention Collaborative (REIC), www.NJEIS.org
- Disability Rights New Jersey (DRNJ): (609) 292-9742, (800) 922-7233(Toll Free), TTY #: (609) 633-7106, www.disabilityrightsnj.org
- Statewide Parent Advocacy Network (SPAN): (973) 642-8100 or (800) 654-7726(Toll Free), www.SPAN.org

THE RIGHT TO COMMUNICATIONS IN YOUR NATIVE LANGUAGE (34 CFR 303.25)

You have a right to communication provided in your Native Language, unless it is clearly not possible to do so.

- If you do not clearly understand English or you have limited English proficiency (LEP), you will be provided with information in the language normally used by you, or, in the case of your child, the language you normally use to communicate at home with your child.
- For evaluations and assessment, the qualified professionals may conduct the visit in the language normally used by your child if it is determined that it is developmentally appropriate for your child.
- Native language includes additional modes of communication such as sign language, braille, or oral communication.

THE RIGHT TO PRIOR WRITTEN NOTICE AND PROCEDURAL SAFEGUARDS NOTICE (34 CFR 303.421)

Prior Written Notice—Every action or refusal to act needs your permission

Prior written notice must be provided to you within 10 calendar days before the New Jersey Early Intervention System (NJEIS) proposes or refuses to initiate/start or change the identification, evaluation, or placement of your child or the provision of Early Intervention services for your child and your family. Neither a practitioner providing Early Intervention services on an IFSP nor the practitioner's provider agency can change services or eligibility without going through the IFSP team process. Remember, you as a parent is an IFSP team member.

The prior written notice must be sufficiently detailed to inform you about:

- The action that is being proposed or refused;
- The reasons for taking the action;
- All procedural safeguards that are available to you under NJEIS including a description of mediation, how to file an administrative complaint, and a due process hearing request, along with important timelines;
- Written so the public can understand the information, and provided in your native language unless it is clearly not possible; and
- If your native language is or mode of communication is not a written language, steps must be taken to ensure that:
 1. The notice is translated orally or by other means in your native language or mode of communication;
 2. You understand the notice; and
 3. There is documentation that these requirements have been met.

THE RIGHT TO INFORMED PARENTAL CONSENT AND ABILITY TO DECLINE SERVICES (34 CFR 303.7 AND 303.420).

WHAT DOES INFORMED CONSENT MEAN? (34 CFR 303.7)

Consent means that you have been given all the information necessary to make an informed decision about the proposed activity in your native language as described above. Consent means you understand and agree to the proposed activity in writing. Therefore, prior written notice must be part of any request for your written consent. Consent is voluntary and you have the right to change your mind at any time.

***Note, parent is defined under 34 CFR 303.25

WHEN IS CONSENT REQUIRED?

- Before your child is evaluated or assessed to determine initial eligibility for Early Intervention services, and when your child needs to be reevaluated or assessed to determine continued eligibility for services.
- Before Early Intervention services are provided to your child.
- Before your child's records or personally identifiable information is released or shared. This will be explained in more detail in later sections of this handbook.
- Before public benefits such as Medicaid are used.

**WHAT HAPPENS IF I DECLINE OR IF I DO NOT GIVE CONSENT FOR THE PROPOSED ACTIVITY?
(34 CFR 303.420)**

If you do not provide consent, or agree to any proposed activity, you cannot be forced to provide consent by any individual, Department, agency, etc. However, if you do not consent, your service coordinator or practitioner will make every attempt to explain the nature of the evaluation and assessment of your child or Early Intervention services that would be available. Your child will not be able to receive the evaluation and assessment or Early Intervention services unless written consent is given.

*** Note, a due process hearing cannot be used to force you to provide consent.

MAY I CONSENT TO SOME SERVICES, AND SAY “NO” TO OTHER SERVICES?

Yes, under the law, you may:

- Accept all services agreed to on the IFSP.
- Decline all services agreed to on the IFSP.
- Accept one or some of the services agreed to on the IFSP and decline other service(s).
- Decline a service after first accepting it without jeopardizing other Early Intervention services under NJEIS.

CAN I WITHDRAW MY CONSENT?

Yes, giving consent is voluntary so you can revoke (withdraw) your consent at any time. If you choose to withdraw consent, please notify your service coordinator in writing so it may be documented in your records.

***Revoking consent does not apply to activities that already were provided under previous written consent.

For example: I give consent on Monday for speech services to be provided on Tuesday. On Friday of the same week, I withdraw my consent for speech services. Although I withdrew my consent on Friday, the withdraw of my consent does not have any bearing on the validity of consent for the speech services I received on Tuesday.

GENERAL RESPONSIBILITIES OF LEAD AGENCY FOR PROCEDURAL SAFEGUARDS (34 CFR 303.400)

THE RESPONSIBILITIES OF DOH AND PROCEDURAL SAFEGUARDS

Under the law, the DOH must:

- Establish or adopt procedural safeguards for confidentiality, parental consent, notice, surrogate parents, and dispute resolution procedures.
- Ensure that each participating agency, the DOH, and EIS providers involved in providing Early Intervention services to you are also following these procedural safeguards.
- Provide you with an initial copy of your child’s Early Intervention record at no cost.

Definitions to keep in mind when understanding confidentiality and access to Early Intervention records:

“Destruction of records” (34 CFR 403) 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.

“Early Intervention records” (34 CFR 403) means all records regarding a child that are required to be collected, maintained, or used under Part C of the IDEA and its implementing regulations. (E.g., electronic messages, evaluations, assessments, progress notes, explanation of benefits, etc.,)

“Participating agency” (34 CFR 403) includes but is not limited to:

1. The Department of Health (DOH)
2. Case Management Office for the DOH
3. Service Coordination Unit (SCU) and service coordinators
3. Regional Early Intervention Collaboratives (REIC)
4. Early Intervention Program (EIP) provider agencies and practitioners responsible for the provision of your Early Intervention services.

“Participating agency” (34 CFR 403) does not include:

1. Primary referral sources such as parents, nurses, family members, etc.,
2. Public agencies such as the State Medicaid or Children’s Health Insurance Program (CHIP), or
3. Private entities that act solely as funding sources for Early Intervention services.

“Disclosure” (34 CFR 99.3) permit access to or the release, transfer, or other communication of personally identifiable information to any party who did not create or provide the record. Disclosure can occur verbally, through writing, or through electronic means.

“Personally Identifiable” (34 CFR 303.29) is information that includes but is not limited to:

- (1) The name of your child, your name, or the name of other family members
- (2) The address of your child
- (3) A personal identifier, such as your child’s or your social security number
- (4) Other indirect identifiers, such as the child’s date of birth, place of birth, and mother’s maiden name (5) other information that, alone or in combination, is linked or linkable to a specific child that would allow a person to identify the child with reasonable certainty.

CONFIDENTIALITY AND OPPORTUNITY TO EXAMINE RECORDS (34 CFR 303.401, 303.402)

The NJEIS is required to have confidentiality procedures in place to keep any information about you, or your child confidential. Both the Part C implementing regulations and the FERPA in 20 U.S.C. 1232g and 34 CFR Part 99 protects your confidentiality. This means, any personally identifiable information, any information or records which were provided to NJEIS, and any information which is maintained about you and/or your child must be kept confidential from the time your child is referred up until your Early Intervention records are no longer required to be kept under state and federal laws. You have the right to written notice of, and your written consent is required prior to the exchange of your information among agencies that are not involved in the provision of services for your child consistent with federal and state laws. All participating agencies including the DOH and EIS providers must comply with all Early Intervention confidentiality procedures.

HOW CONFIDENTIALITY APPLIES TO YOU:

While your child is receiving Early Intervention services, your child's information may be shared with participating agencies involved in the provision of your child's Early Intervention services. These participating agencies are not required to provide you with written notice and your written consent is not needed so long as the information pertains directly to your Early Intervention services.

You also have the right to inspect and review all Early Intervention records collected, maintained, or used under NJEIS including records relating to evaluations and assessments, eligibility determinations, development, and implementation of IFSPs, provision of Early Intervention services, individual complaints involving your child, or any part of your child's Early Intervention record under NJEIS.

ADDITIONAL INFORMATION ABOUT EARLY INTERVENTION RECORDS AND CONFIDENTIALITY:

NJEIS is also required to:

1. Meet state and federal data collection and reporting requirements.
2. Maintain a secure electronic database of your child and family's information including name, address, date of birth, telephone number, personal identification number, eligibility services, and service providers.

DISCLOSURE OF INFORMATION SUBJECT TO PARENTAL OPT-OUT AND TRANSITION TO PRESCHOOL (34 CFR 303.401)

Subject to 'Opt-Out of Disclosure' below, the NJEIS is required to disclose the following personally identifiable information under the IDEA to the New Jersey Department of Education and the school district where the child resides, in accordance with the transition requirements:

- Child's name.
- Child's date of birth.
- Parent contact information (including parents' names, addresses, and telephone numbers).

WHAT'S THE PURPOSE OF DISCLOSING THE INFORMATION LISTED ABOVE TO THE DEPARTMENT OF EDUCATION AND MY SCHOOL DISTRICT?

The purpose is to ensure that children who are potentially eligible for services experience a smooth transition of services to Part B, preschool services when the child turns three and leaves Early Intervention.

CAN I OBJECT TO THIS LIMITED DISCLOSURE OF MY PERSONALLY IDENTIFIABLE INFORMATION?

Yes, the DOH and all participating providers must inform you prior to the disclosure and provide you with 10 calendar days to object or opt-out of the disclosure in writing. If you provide a written objection within the timeframe, the information regarding your child's name, child's date of birth, and your contact information as the parent cannot be disclosed.

NOTICE TO PARENTS (34 CFR 303.404)

When your child is referred to Early Intervention, the DOH must provide you with notice on the following confidentiality requirements:

- A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods New Jersey intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;
- A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions; and
- A description of the extent that the notice is provided in the native languages of the various population groups in New Jersey.

ACCESS RIGHTS (34 CFR 303.405)

DO I HAVE A RIGHT TO REVIEW MY CHILD'S EARLY INTERVENTION RECORDS?

- Yes, under the law, your records must be made available no later than 10 calendar days after you make the request.
- You have the right to inspect and review any Early Intervention record relating to your child which is collected, maintained, or used by the agency without unnecessary delay and before you meet to discuss any meeting regarding an IFSP or hearing relating to identification, evaluation, or placement or the provision of appropriate Early Intervention services to your child.
- The NJEIS maintaining your child's Early Intervention record must assume you have authority to inspect/review your child's records unless your rights have been terminated under state law, such as through guardianship or divorce and such documentation is provided.

WHAT RIGHTS COME WITH INSPECTING AND REVIEWING EARLY INTERVENTION RECORDS?

- The right to a response from the participating agency to reasonable requests for explanations and interpretations of the Early Intervention record;
- The right to request that the participating agency provide copies of the Early Intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- The right to have someone who is representing you to inspect and review the record with your written consent.

RECORD OF ACCESS (34 CFR 303.406)

HOW DO I KNOW WHO IS ACCESSING MY CHILD'S RECORD?

To ensure the confidentiality of your records, participating agencies are required to keep a record of any parties accessing your Early Intervention records, collected, maintained, or used under Part C of IDEA. The agency must record information regarding the name of the party, date of access, and the authority for the party to use or access the record. However, if you, or authorized representatives and employees of the participating agencies access your child's record, no such record must be kept.

RECORDS ON MORE THAN ONE CHILD (33 CFR 303.407)

You have the right to inspect and review only the information relating to your child. Therefore, if a record contains information about your child, and another child, you will only be informed of the specific information regarding your child.

LIST OF TYPES AND LOCATIONS OF INFORMATION (33 CFR 303.408)

If you ask for the list of the types and locations of where your Early Intervention records are collected, maintained, or used, the participating agency must provide you with that information.

FEES FOR RECORDS (34 CFR 303.409):

- A participating agency must provide you with a copy of each evaluation, assessment of your child, family assessment, and IFSP for free as soon as possible after each IFSP meeting.
- Except for receiving a free copy of each evaluation, assessment of your child, family assessment, and IFSP, if you request a copy of your records, a reasonable fee for copying may be charged if the fee charged does not prevent you from reviewing and accessing your records.
- Additionally, you cannot be charged a fee to search for or retrieve your records.

AMENDMENT OF RECORDS AT A PARENT'S REQUEST (34 CFR 303.410)

If you believe that information in your Early Intervention records collected, maintained, or used in Early Intervention is inaccurate, misleading, or violates the privacy or other rights of you or your child, you may request the participating agency that maintains the information to change the information. The participating agency will then decide whether to change the information within a reasonable time after receiving the request. If the participating agency refuses to change the information, you will be informed in writing of the refusal and be advised of the right to a hearing.

OPPORTUNITY FOR A HEARING (34 CFR 303.411)

If you think your child's Early Intervention record is inaccurate, misleading, or otherwise in violation of the privacy or other rights of you or your child, you may request a hearing by contacting the DOH.

If you request a due process hearing with the Office of Administrative Law, the hearing will be conducted according to the hearing procedures under FERPA, 34 CFR 99.22, or you may request a hearing to be held at the DOH-NJEIS in which case the FERPA hearing requirements will be applied.

RESULTS OF HEARING (34 CFR 303.412)

- If the hearing results indicate that the information in your child's record is inaccurate, misleading, or otherwise in violation of the privacy or other rights of you or your child, your records shall be amended, and you will be notified in writing of the amendment; or
- If the hearing results indicate that the information in your child's record is accurate, not misleading, or otherwise in violation of the privacy or other rights of you or your child, you have the right to place in your child's record, a statement commenting on the information and providing any reasons for disagreeing with the hearing results.
- The participating agency must include this statement in your child's record along with the rest of your child's Early Intervention record.
- If at any point your child's Early Intervention record is shared with another party, your statement disagreeing with the hearing results must also be shared with the party.

CONSENT PRIOR TO DISCLOSURE OR USE (34 CFR 303.414)

Your prior parental consent must be obtained before personally identifiable information is:

- Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under Part C, subject to this section; or
- Used for any purpose other than meeting a requirement of Part C.

ARE THERE EXCEPTIONS WHEN CONSENT IS NOT NEEDED FOR DISCLOSURE?

Yes, the DOH or other participating agencies may disclose your information without consent in the following situations:

- For transition to Part B, preschool purposes (subject to the opt-out policy), or
- Under any of the exceptions under FERPA, 34 CFR 99.31 which applies to Part C.

WHAT ARE THE FERPA EXCEPTIONS THAT APPLY TO PART C WHICH ALLOWS FOR DISCLOSURE WITHOUT CONSENT?

These FERPA exceptions are:

- The disclosure is to other qualified personnel or service coordinators in the Early Intervention system that have a legitimate interest in the provision of services to you and your family.
- Contractors, consultants, volunteers, or other parties whom the DOH or participating agencies have subcontracted services or functions in the provision of services to you and your family and:
 - ❖ They perform a service or function that the DOH or participating agency would otherwise use employees;
 - ❖ Is under the direct control of the DOH or the participating agency using and maintaining Early Intervention records; and
 - ❖ Is held to the same legal requirements for the use and redisclosure of personally identifiable information from Early Intervention records which they have access.
- Once participating agencies have access to the Early Intervention records, they must use reasonable methods to ensure that qualified personnel or service coordinators have access only to those Early Intervention records in which they have a legitimate interest in the provision of services to you and your family. A participating agency that does not use physical or technological access controls must ensure that its administrative policy for controlling access to these records is effective and that the access is consistent with serving a legitimate interest in the provision of Early Intervention services to you and your family.

WHAT HAPPENS WHEN YOU REFUSE TO CONSENT UNDER THIS SECTION?

The NJEIS must have policies and procedures to be used when consent is withheld. This may include holding a meeting to explain how your right to refuse consent affects the ability of your child to receive services under Part C. However, the procedures cannot be used to override your right to refuse consent.

WHO HAS ACCESS TO MY EARLY INTERVENTION RECORDS?

These participating agencies will have access to your records which include:

- REIC staff responsible for the system point of entry referral, data entry into an electronic NJEIS database, eligibility evaluation/assessment and, if eligible, transfer of your child and family's record.
 - SCUs/service coordinator responsible for the coordination of your Early Intervention services.
 - Early Intervention Program (EIP) provider agencies and practitioners responsible for the provision of your Early Intervention services.
 - Department of Health (DOH), the lead agency responsible for the administration of the NJEIS.
- ***If there is any specific information you do not want shared with the participating agency, please inform your service coordinator.

SAFEGUARDS (34 CFR 303.415)

- Each participating agency must protect the confidentiality of personally identifiable information at collection, maintenance, use, storage, disclosure, and destruction stages.
- One official at each agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
- All persons collecting or using personally identifiable information are trained on the state's policies and procedures under confidentiality and FERPA, 34 CFR Part 99.
- Each agency participating in NJEIS must maintain, for public inspection, a current listing of the names and positions of employees within the agency who have access to personally identifiable information.

DESTRUCTION OF INFORMATION (34 CFR 303.416)

Participating agencies are required to inform you when your personally identifiable information on you or your child is no longer need for Early Intervention services. Once informed, you may request the participating agencies to destroy your personally identifiable information.

ARE THERE EXCEPTIONS TO THE DESTRUCTION OF MY PERSONALLY IDENTIFIABLY INFORMATION?

Yes, a permanent record of the following must be kept, and cannot be destroyed:

1. A permanent record of your child's name,
2. Date of birth,
3. Your contact information which includes address and phone number,
4. Names of service coordinator(s),
5. Names of EIS provider(s), and
6. Exit data which includes year and age upon exit, and any programs that your child may have entered after exiting Early Intervention may be maintained without any time limitation.

ENFORCEMENT (34 CFR 303.417)

To ensure that all requirements under the IDEA and the Part C regulations are met, the DOH has policies and procedures, including sanctions, and the right to file a complaint available to you.

THE RIGHT TO A SURROGATE PARENT (34 CFR 303.422)

WHEN IS A SURROGATE PARENT APPOINTED?

- When no “parent,” as referenced below, can be identified.
- The service coordinator, after reasonable efforts, cannot locate a parent.
- The child is a ward of the state under the laws of New Jersey.

WHY IS A SURROGATE PARENT APPOINTED?

To ensure that the rights of children are protected when a parent as defined below cannot be located or identified, or the child is a ward of the state under the laws of New Jersey.

WHO QUALIFIES AS PARENT (34 CFR 303.27)

WHO CAN ACT AS PARENTS AND MAKE DECISIONS ON BEHALF OF CHILDREN IN EARLY INTERVENTION?

Adoptive parents, foster parents, and surrogate parents who have been appointed in accordance with Part C of the IDEA described below have the same rights as any parent for all purposes outlined above, unless the parent’s legal rights have been terminated.

PARENT MEANS:

- A biological or adoptive parent of a child
- 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
- A guardian generally authorized to make Early Intervention, educational, health or developmental decisions for the child.
- 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.
- A surrogate parent who has been appointed in accordance with Part C of the IDEA.

WHAT IS THE TIMELINE FOR APPOINTING THE SURROGATE PARENT?

The DOH must make reasonable efforts to ensure the appointment of a surrogate parent not more than 30 days after a determination is made that the child needs a surrogate parent.

BIOLOGICAL OR ADOPTIVE PARENTS:

If more than one party under the definition of parent qualifies to act as the parent, the biological or adoptive parent will be recognized and presumed to be the parent for the child unless:

1. The biological parent or adoptive parent do not have the legal right to make educational or Early Intervention services because parental rights have been terminated.
2. There is a court judgment, or court order identifying a specific person or persons who may qualify as “parent” of a child, or to make educational or Early Intervention service decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of Part C of the IDEA.

WARDS OF THE STATE AND WHO CAN APPOINT A SURROGATE PARENT:

- The judge who is overseeing a child’s case may appoint a surrogate parent for the child instead of the DOH. If the judge appoints a surrogate parent, the surrogate will meet all the necessary criteria as required by law.
- The DOH may also appoint a surrogate parent. When the DOH appoints a surrogate, the DOH will generally consult with the New Jersey Department of Children and Families, or the public agency assigned care of the child.

***Please note that an individual who is otherwise qualified to be a surrogate parent under 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.

WHAT ARE THE RIGHTS OF A SURROGATE PARENT?

A Surrogate parent has the same rights as a parent for all purposes under Part C.

THE RIGHT TO FORMAL DISPUTE RESOLUTION (34 CFR 303.430 THROUGH 303.434)

Mediation, Administrative Complaint, and/or Due Process Hearing **Informational sheet also available

HOW CAN I RESOLVE ANY DISAGREEMENTS I MAY HAVE REGARDING MY EARLY INTERVENTION SERVICES?

If you disagree with the identification, evaluation, eligibility determination, placement of your child, or you disagree with the provision of appropriate Early Intervention services for your child, you should discuss your concerns with your service coordinator. Many disagreements can be resolved informally simply by talking to your service coordinator about your concerns. However, if it is your preference to resolve the disagreement through formal procedures, the formal dispute resolution options established under state and federal law are also available. These options include mediation, administrative complaint, and impartial due process hearing.

HOW DO I REQUEST A MEDIATION, ADMINISTRATIVE COMPLAINT AND/OR DUE PROCESS HEARING?

All requests for formal dispute resolution may be filed in writing with the Procedural Safeguards Office (PSO), DOH. The PSO has forms to help you file the request. It is available on-line at: <https://nj.gov/health/fhs/eis/families/safeguards-familyrights/>. If you wish to file a request for any of the options, it is the responsibility of the service coordinator, REIC, provider agency, and/or the PSO to assist you, in your primary language and/or method of communication (braille) unless it is clearly not possible. If you designate an individual to file a dispute resolution on your behalf, your written consent is required before your dispute filing may be initiated.

***Please note that parties are not entitled to legal fees from NJEIS under the formal dispute resolution options.

MEDIATION (34 CFR 303.430 AND 431)

A statewide mediation system is available to you at any time to ensure that you may voluntarily access a non-adversarial process for the resolution of individual disputes regarding the New Jersey Early Intervention System (NJEIS). Mediation is available for disputes under Part C including any matters arising prior to the filing of a due process hearing. Mediation is voluntary on the part of all parties.

HOW ARE MEDIATORS CHOSEN?

The Procedural Safeguards Office identifies individual mediators trained in Early Intervention matters and mediation techniques as a condition of serving as a mediator in Early Intervention. The mediator is chosen on a random, rotational, or other impartial basis. The mediator cannot be an employee of the Department of Health (DOH) or participating agency involved in the provision of Early Intervention services or other services to your

child. Although the DOH or participating agency may pay for the mediator, the mediator is not an employee of the DOH, or the participating agency. The mediator cannot have a personal or professional interest that conflicts with the person's objectivity.

CAN I FILE FOR A DUE PROCESS HEARING AND AN ADMINISTRATIVE COMPLAINT WHEN I FILE FOR THE MEDIATION?

- Yes, mediation cannot be used to deny or delay your right to an impartial due process hearing or any other rights you may have available to you in Early Intervention. You can request mediation alone or simultaneously with a request for an impartial due process hearing and you may withdraw from the mediation process at any time. You may also file a request for mediation when filing an administrative complaint.
- A request for mediation must be in writing, signed and dated by you or, with your consent, your representative.
- If any party other than you requests mediation, it may only be initiated with your written consent. Once your written consent has been obtained to engage in mediation, evidence of that written consent shall be attached to the request for mediation.

WHAT IS THE TIMEFRAME FOR A MEDIATION?

The mediation process, including issuance of a written mediation agreement, shall be completed within 30 calendar days of the receipt of the request for mediation unless a request for mediation, an impartial due process hearing, or complaint investigation was requested at the same time. In that case, the mediation must be completed within fifteen (15) calendar days to ensure adequate time for completion of the due process proceeding or complaint investigation.

WHERE IS THE MEDIATION HELD AND WHO PAYS FOR THE MEDIATION?

The mediation must be scheduled in a timely manner and held in a location that is convenient to the parties to the dispute. The state incurs the cost of the mediation process.

WHAT HAPPENS IF MY MEDIATION IS SUCCESSFUL IN RESOLVING MY DISAGREEMENT?

If you resolve a dispute with the other parties through the mediation process, you and the other parties must sign a legally binding agreement that documents the resolution. The agreement must state that all discussions that occurred during the mediation process shall remain confidential and may not be used as evidence in any subsequent impartial due process hearing or civil proceeding. Any agreement reached at the mediation shall be signed by both the parent and representative of the NJEIS that has the authority to bind such agency before the conclusion of the mediation. The service coordinator will incorporate the terms of the mediation agreement into the IFSP as appropriate by holding an IFSP meeting. A written, signed mediation agreement is enforceable in any state court of competent jurisdiction or in a federal district court of the United States.

CAN THE MEDIATION PROCESS BE RECORDED?

- Neither the mediator nor any party to a mediation proceeding may record or transcribe discussions held during the mediation.
- Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent impartial due process hearing or civil proceeding in any federal court or state court.

DUE PROCESS HEARINGS BY THE OFFICE OF ADMINISTRATIVE LAW (34 CFR 303.430 AND 435-438)

An impartial due process hearing is an administrative hearing conducted by an administrative law judge from the Office of Administrative Law who is an impartial person, has knowledge about Part C of the IDEA, and understands the Early Intervention services available for eligible children and their families and their needs.

The administrative law judge is an impartial person who:

- Is not an employee of DOH or a NJEIS provider agency involved in the provision of Early Intervention services;
- Is not involved in the care of your child; and
- Does not have a personal or professional interest that would conflict with objectivity in the hearing process.

***An administrative law judge is not an employee of DOH, or a NJEIS provider agency solely because the administrative law judge is paid by the agency to implement the dispute resolution process.

WHAT ARE THE REQUIREMENTS FOR FILING AN IMPARTIAL DUE PROCESS HEARING REQUEST?

A written request for an impartial due process hearing must be filed within one year of the date you knew, or you should have known about the problem that is causing you to file the request for a hearing.

When filing a hearing request, in addition to making the request through the Procedural Safeguards Office, you are also required to provide a copy of the hearing request to the other parties to the hearing, so they are provided notice of the issues in dispute.

WHAT HAPPENS TO MY CHILD'S SERVICES WHEN I FILE A DUE PROCESS HEARING?

Your child will continue to receive the Early Intervention services identified in your IFSP during the pendency (time-period) of a due process hearing, unless the NJEIS and you agree otherwise. If your due process hearing request involves decisions related to the initial provision of services under Part C of the IDEA, your child must receive those services that are not in dispute.

CAN I HAVE AN ATTORNEY REPRESENT ME AT THE IMPARTIAL DUE PROCESS HEARING?

Yes, you can be accompanied and advised by counsel and by individuals with special knowledge or training with respect to Early Intervention services for children eligible under NJEIS. However, you are required to notify the Procedural Safeguards Office of the representation no later than five days after filing the request for the impartial due process hearing with the Procedural Safeguards Office. However, you will not be prevented from having your attorney at the hearing if you fail to inform the Procedural Safeguards Office.

WHAT TO EXPECT AT THE IMPARTIAL DUE PROCESS HEARING:

- The administrative law judge will listen to the presentation of relevant views about the complaint/disagreement, examine all information relevant to the issues, and seek to reach a timely resolution of the disagreement.
- You or your attorney/representative will be allowed to present evidence and confront, cross-examine, and to compel the attendance of witnesses.
- The judge will prohibit the introduction of any evidence at the proceedings that has not been disclosed to you at least five calendar days before the proceeding
- You will receive a written decision from the Office of Administrative Law which is mailed to you and the parties.

- You are entitled to a written or electronic verbatim (word by word) transcription of the hearing proceedings, at no cost to you.

WHERE AND WHAT IS THE TIMEFRAME FOR AN IMPARTIAL DUE PROCESS HEARING?

- An impartial due process hearing must be held at a time and place that is reasonably convenient to you.
- A written decision must be provided to you no later than 30 calendar days after the Procedural Safeguards Office received your request for a hearing. However, the Administrative Law Judge may grant specific extensions of time beyond the 30-day period at the request of either party. A copy of the decision is also placed in your child's Early Intervention record.

WHAT HAPPENS IF I DISAGREE WITH THE DECISION OF THE OFFICE OF ADMINISTRATIVE LAW JUDGE?

Any party dissatisfied with the findings and decision of the due process hearing has the right to bring a civil action in state or federal court.

COMPLAINTS (34 CFR 303.430 AND 432-434)

You or your representative, other individuals, or organizations, including an organization or individual from another state, may file a complaint with the Procedural Safeguards Office alleging that an Early Intervention program/participating agency, service provider, service coordinator, REICs, the DOH, or any other party involved in the NJEIS is violating or has violated a requirement of federal or New Jersey law or NJEIS policies and procedures and/or the Procedural Safeguards Office.

WHAT INFORMATION MUST BE INCLUDED IN AN ADMINISTRATIVE COMPLAINT?

- A written statement identifying who has violated a requirement of federal or New Jersey law, or the NJEIS policies. This may include but is not limited to, the DOH, an individual, an Early Intervention Program (EIP) provider agency/participating agency, a service provider, Service Coordination Unit (SCU), a REIC has violated a requirement of federal or New Jersey law or NJEIS policies and procedures.
- A description of the nature of the problem, including facts relating to the problem.
- A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- The name of the provider agency serving the child must be provided.
- The signature and contact information (name, address, and telephone number) of the complainant, and the name of the child, if the alleged violations are with respect to a specific child.

WHAT IS THE TIME LIMIT FOR FILING AN ADMINISTRATIVE COMPLAINT AND WHO GETS A COPY OF THE COMPLAINT?

The alleged violation must have occurred not more than one year before the date that the complaint is received by the Procedural Safeguards Office.

WHO GETS A COPY OF THE ADMINISTRATIVE COMPLAINT?

The party filing the administrative complaint must forward a copy of the complaint to all parties including the provider agency serving the child as soon as the complaint is filed with the Procedural Safeguards Office.

RESPONSIBILITIES OF THE PROCEDURAL SAFEGUARDS OFFICE AND THE ADMINISTRATIVE COMPLAINT

During the investigation, the Procedural Safeguards Office will:

- Determine if an independent on-site investigation to the local or regional provider agency is necessary and conducts the investigation accordingly.

- Provides the DOH, an individual, an EIP agency, a SCU, or a REIC with an opportunity to respond to the complaint, including at a minimum, a proposal to resolve the complaint.
- Reminds the individual filing the complaint that they may voluntarily engage in mediation consistent with this document.
- Gives the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint
- Conducts interviews with the complainant, the respondent(s) and any other relevant party including REICs and state agencies, if necessary.
- Reviews all relevant information, including the results of any on-site investigation, pertinent written records, and documents such as forms, reports and files, and any additional information provided by the party(s) and make an independent determination as to whether the DOH, an individual, an EIP agency, a SCU, or a REIC is violating a requirement of Part C of IDEA.
- After reviewing all relevant information, make an independent determination as to whether a violation of a Part C requirement or NJEIS policy and procedure has occurred and provide all parties to the complaint with a written determination.

WHAT WILL BE IN THE WRITTEN DETERMINATION?

- Findings of fact and conclusions for each allegation in the complaint and the reasons for the Procedural Safeguards Office's final decision will be provided.
- If the Procedural Safeguards Office finds that there was a failure to provide appropriate services, the Procedural Safeguards Office must address:
 1. How to remedy the denial of appropriate services, including, as appropriate, any applicable monetary reimbursement, compensatory services, crediting the family cost share if applicable, or issuing a corrective action appropriate to address the specific needs of the child, or issuing a corrective action to address a failure in the NJEIS that affects more than one child.
 2. Appropriate future provision of services for all infants and toddlers with disabilities and their families.

WHAT IS THE TIMEFRAME FOR THE ADMINISTRATIVE COMPLAINT?

Generally, an administrative complaint will be completed within 60 calendar days of receipt of the complaint unless there are exceptional circumstances that exist which require an extension of the 60 calendar days, or the parties to the complaint agree to extend the time to engage in mediation.

HOW CAN I BE SURE THAT THE DECISION OF THE PROCEDURAL SAFEGUARDS OFFICE WILL BE FOLLOWED?

The Procedural Safeguards Office has procedures such as technical assistance activities, negotiations, and corrective actions to achieve compliance.

WHAT HAPPENS IF I ALSO FILED AN IMPARTIAL DUE PROCESS HEARING REQUEST WHEN I FILED THE ADMINISTRATIVE COMPLAINT?

The Procedural Safeguards Office will set aside any part of the complaint that contains issues that are being addressed in the due process hearing until the conclusion of the hearing. Only issues that are not part of the due process hearing will be addressed. These issues must be resolved within the 60-calendar day complaint timeline discussed previously. If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the Procedural Safeguards Office will inform the parties that the hearing decision is binding on that issue. The Procedural Safeguards Office is also responsible for resolving any complaint alleging a public agency, a service provider agency, or NJEIS failed to follow the due process hearing decision.