

## Chapter 2: Parents' Rights, Opportunities, and Responsibilities

This chapter details the procedural safeguards and rights provided through Part C of the Individuals with Disabilities Education Act (IDEA). These rights and safeguards must be vigorously enforced throughout the early intervention process.

Topics in this chapter include:

	Page
<b>The Rights of a Family in EarlySteps</b>	2
Parents' rights in EarlySteps include	2
Family Roles and Responsibilities in EarlySteps	3
Some suggestions for making the most of each visit	3
<b>Definitions of Procedural Safeguards</b>	4
Consent means	4
Native language	4
Personally identifiable information	4
Surrogate Parent	4
<b>Prior, Written Notice of Action</b>	4
<b>Consent</b>	5
<b>Confidentiality</b>	6
<b>Opportunity to Examine Records</b>	6
<b>Resolution of Disputes: Complaints, Mediation, and Due Process Hearings</b>	7
Complaints	7
Initiating Formal Complaints	7
Timelines	7
Complaint Types	8
<b>Indicator # 10</b>	8
<b>Mediation and Due Process</b>	8
What is Mediation?	8
What is Due Process?	8
Requesting Mediation	9
Mediator Qualifications	9
<b>Due Process/Appeal</b>	9
Effect on Due Process Hearing Timelines	10
Appointment of an Impartial Person	10
Parents Rights in Administrative Proceedings	10
Due Process Resolution	11
Civil Action	11
Status of a Child during Proceedings	11
<b>Indicator # 11</b>	11
<b>Child's Right to a Surrogate Parent</b>	11
Immunity from Liability	12
Children under the Care and Custody of the State	12
<b>Other Procedural Safeguards: Accept or Decline Services</b>	12
<b>Refuse to Complete/Sign Documents</b>	13
<b>Indicator # 4</b>	13
<b>Freedom of Choice</b>	13
<b>Evaluation and Assessment</b>	13
<b>Individualized Family Service Plan</b>	13
<b>RECOMMENDED PRACTICE: PROVIDING PROCEDURAL SAFEGUARDS INFORMATION TO FAMILIES</b>	14

## The Rights of a Family in EarlySteps

In IDEA, families are given guarantees and rights to protect their interests and those of their child. These are called *Procedural Safeguards*. “Procedural safeguards are the checks and balances of the system. . . that ensure quality and equity. . . and provide the protection of an impartial system for complaint resolution. The primary safeguard provided for is the clear acknowledgement of the family’s role as a primary decision-maker in developing the IFSP” (Hurth and Goff, 2002). The purpose of this chapter is to outline the safeguards that support this role for families.

When a child is eligible for services in EarlySteps, the family is also entitled to certain rights designed to protect the child and family during their participation in the system. All families served by EarlySteps are guaranteed these rights. These rights are required by laws and regulations:

*Laws: Individuals with Disabilities Education Improvement Act (IDEA, Part B & C, Revised 2004); Family Educational Rights and Privacy Act (FERPA, )*

*Regulations: IDEA Code of Federal Regulations: 34 CFR Part 303, proposed, 2007, 34 CFR Part 610-62, and FERPA 34 CFR Part 99*

*Louisiana Policy: EarlySteps Policy, Revised, Approved 2009*

*EarlySteps Practice Manual: Chapter 2, Revised January, 2010*

The lead agency is responsible for ensuring effective implementation of the Part C procedural safeguards by each enrolled agency, service provider, or contractor. These procedural safeguards are a required component of the early intervention system and protect the rights of participating, eligible children and their families. The lead agency has the responsibility to ensure that:

- Families are adequately informed of their rights and understand them;
- Procedural safeguards are implemented throughout the early intervention process;
- Complaints are resolved in a timely manner
- Personally identifiable information is handled according to a prescribed, confidential process
- Procedures to resolve disputes are in place

Part C procedural safeguards apply at all steps in the process of intake, eligibility determination, IFSP development and IFSP implementation and transition out of Part C. For some children, Medicaid rights and responsibilities may also apply. Medicaid rights apply to those Medicaid covered services that are listed on an IFSP (Support Coordination, Occupational Therapy, Physical Therapy, Speech/Language Pathology, Audiology, and Psychology). Part C procedural safeguards and rights do not apply to Medicaid services that are provided outside the parameters of an IFSP, such as well-baby care, acute illness care, hospitalizations, etc.

### Parents’ rights in EarlySteps include:

- Written prior notice
- Written, informed Parent Consent
- Confidentiality, Privacy, and Release of Information

- Examination of records
- Dispute/Complaint resolution
- Child's Right to a Surrogate Parent

In addition, EarlySteps provides other safeguards to support a family's role as a team member:

- Evaluation and Assessment provided at no cost
- Services provided in the natural environment according to the Individualized Family Service Plan within 45 days of referral.
- Services begin within 30 days of the parent's consent on the IFSP
- Right to decline evaluation and services
- Freedom of Choice in provider selection

Parents are asked to sign that they have received a copy of the Family Rights Handbook on the Notice of Action form.

### **A Note to Families: Family Roles and Responsibilities in EarlySteps**

In order for your family to receive the maximum benefits from early intervention services, it is important for you to fully participate. You are a key decision maker and know the needs of your child and family best. You are your child's best advocate throughout his/her life. We ask that you communicate with the Early Intervention staff about your concerns and priorities and let them know honestly what your needs and what is working for you and what is not. By participating as a team member, you can maximize your child's development and meet your family's needs regarding your child. Here are some ways you can help:

- Notify your FSC and providers when there is a change in address or phone numbers.
- Accept your phone calls from the FSC monthly and return calls to FSC and providers in a timely manner.
- Work with everyone as a member of the team, following through with activities, strategies and techniques with providers.
- Notify providers if unable to keep scheduled appointment in a timely manner to allow for time to reschedule the appointment.
- Following provider team suggestions for making the most of each visit.

### **Some suggestions for making the most of each visit:**

- Participate in the IFSP process—work with service providers to plan and carry out goals for your child, and share your knowledge and observations with them
- Inform your service coordinator of issues that may affect your child's services
- Schedule your visit during times that are best for your child and family or other caregivers. Be present and actively participate in all visits.
- Write down any questions you may have and be prepared to discuss what has happened since your last visit.
- Ask to be shown anything you do not completely understand and practice the strategies together during the visit.
- Use the strategies throughout the day with your child and make notes of what is working and what is not.
- Be open and honest with your service providers. Don't be afraid to ask questions or tell the service provider if something is not going well.
- Be on time for scheduled appointments and notify your service provider when you are unable to keep an appointment. Provide reasonable notice if you need to cancel or reschedule a visit.
- Participate in quarterly team meetings with the whole provider team.

## Definitions of Procedural Safeguard Terms

**Consent** means that ---

- The parent has been fully informed of all information relevant to the activity for which consent is sought. This information is provided in the parent's native language or by another appropriate mode of communication;
- The parent understands and agrees **in writing** to the carrying out of an activity for which consent is sought, and the consent describes that activity and lists records (if any) that will be released and to whom the records will be sent; and
- The parent understands that the granting of consent is voluntary on their part and may be revoked at any time.
- The parent understands that they may accept or decline an early intervention service without jeopardizing other early intervention services.

**Native language** means the language or mode of communication normally used by the parent of an eligible child. Every attempt must be made to obtain interpreter services if the family's native language is not English or if the family uses another mode of communication (e.g., Braille, American Sign Language) unless it is clearly not feasible to do so. If the native language (or other mode of communication of the parent) is not a written language, the public agency or designated service provider shall take steps to ensure that:

- The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
- The parent acknowledges understanding of the notice; and
- There is written evidence that these requirements have been met.

If the parent is hearing impaired, blind, or does not have a written language, the mode of communication must be the same mode of communication that the parent typically uses (such as sign language, Braille, or oral communication).

**Personally identifiable information** includes the following:

- The name of the child, the child's parent(s), or other family member;
- The address of the child or child's parents;
- A personal identifier, such as the child's or parent's social security number; or
- A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

**Parent** means a parent, guardian, foster parent, or "person acting as a parent". The term does not include the state if the child is a ward of the state; and **person acting as a parent** refers to relatives of the child or private individuals allowed to act as a parent of a child with "explicit" or "implicit" consent from the child's natural parents or guardians.

**Surrogate Parent** means a person who is assigned to represent the role of a parent on behalf of a child when no parent is identified or cannot be located.

## Prior, Written Notice of Action

Federal regulations require that procedural safeguards be given to the family each time prior written notice is given. EarlySteps provides this information to families in its *Family Rights Handbook*.

Prior written notice of action must be given to the parents of a child within a reasonable timeframe before the public agency or service provider **proposes, or refuses to initiate or change** any of the following for the child or the child's family:

- Identification and Evaluation
- Placement (Location of service)
- Provision of appropriate early intervention services

The notice must be in sufficient detail to inform the parents about:

- The action being proposed or refused;
- The reasons for taking the action;
- All procedural safeguards that are available; and
- How to file a complaint with the state and the timelines for those procedures

**Reasonable timeframe** has been defined by the State of Louisiana to be three (3) calendar days. This means that the Notice of Action must be provided to parents at least three (3) calendar days before:

- Eligibility determination
- IFSP development
- Changing or revising early intervention services
- Changing the location of early intervention services
- Terminating EarlySteps services

EarlySteps uses a form called a **Notice of Action** to meet the prior, written notice requirement.

The notice of action is written in a way that makes it understandable to the general public and be provided in the parent's native language as defined above. In EarlySteps, there are many occasions where families and providers meet to discuss the child's progress. When decisions are to be made, **Notice of Action must** be implemented so that the family understands the impact and implications of the discussion. Rushing through the process does not give families or providers the time to think about the impact of the decision. **Notice of Action** reminds the family that if they disagree with the outcome of the team discussion, they have options to appeal the decision. This is a hallmark of family-centered services.

EarlySteps encourages EarlySteps Intake Coordinators, Support Coordinators, and providers to respect families' needs for this reasonable time frame.

## Consent

Written parent consent **must** be obtained before:

- Conducting the initial evaluation and assessment of a child; and
- Initiating or changing the provision of early intervention services.

If the parent does not give consent (or withdraws consent after first providing it) the support coordinator shall make reasonable efforts to ensure that the parent:

- Is fully aware of the nature of the evaluation and assessment or the services that would be available; and
- Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

Parents may refuse consent for any particular service without jeopardizing any other services. Written consent may be cancelled in writing at any time. The consent form must also list effective dates and specific records that will be released and to whom. Parents sign consent for services in Section 6 of the IFSP and on the Notice of Action form.

If a parent refuses to consent to the eligibility determination or early intervention services if the child is eligible, **AND** the Intake Coordinator, Family Support Coordinator or Service Provider believes this action to be abuse or neglect of that child, a call to the Abuse and Neglect hotline at the Office of Community Services is required. The phone number to call is 1-800-422-4453.

## Confidentiality

A parent's written consent must be obtained before personally-identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information in early intervention records. Directory information (child's name, parent's name, address and phone number) may be released to participating agencies without parental consent as authorized by the Family Educational Rights and Privacy Act (FERPA), Section 99.31. This release of directory information includes the release to the Community Outreach Specialists, individuals who work under contract with the lead agency to provide supports and services to parents whose children are enrolled in EarlySteps, and notification to the local education agency prior to a child reaching his/her 3<sup>rd</sup> birthday. EarlySteps uses the **Consent to Release and Share Information** for the purpose of obtaining a family's consent to release personally-identifiable information.

EarlySteps is required to tell parents about the policies and procedures that ensure personally identifiable information is kept confidential. Information describing the children for whom personally identifiable information is maintained, types of information sought, the methods used in gathering the information (including the sources from whom information is gathered), and the uses of the information is provided to you. Participating agencies must have policies and procedures regarding:

- The collection, storage, and disclosure to third parties, and destruction of personally identifiable information.
- The designation of one person in the agency responsible for ensuring confidentiality
- The training of staff regarding the requirements from IDEA and FERPA
- The list of names and positions of the agency's employees who have access to the information
- The destruction of the information when it is no longer needed and that it must be destroyed at your request.
- The possible maintenance of permanent records: name, address, phone number, etc.

If the child is a ward of the state, residing with foster parents, or has a surrogate parent, the **Consent to Release and Share Information** form must be signed by the foster parent, surrogate parent, or OCS caseworker, according to policy of the Office of Community Services prior to any release of information from the child's file.

## Opportunity to Examine Records

In accordance with the confidentiality procedures in the IDEA-Part B regulations (34 CFR §300.560-300.576), the parents of eligible children must be given the opportunity, without unnecessary delay, to inspect and review records relating to evaluations and assessments, eligibility determinations, IFSP development and implementation, individual complaints dealing with the child, and any other records about the child and the child's family.

Parents also have the right to request an explanation of the records or to request to amend the records if they believe the information is inaccurate or misleading. Parents may also request a copy of their child's entire record. This request is to be made to the local SPOE in the region the child is receiving EarlySteps services. Parents may be charged a reasonable fee to cover the cost of photocopying.

The agency must keep a written record of the individuals that have access to the child's early intervention record. This record identifies who has reviewed the record and includes the name of the individual, the date the record was reviewed, and the purpose for the review. This record of access is maintained in the child's early intervention record.

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

Public agencies must provide parents a list of the types and locations of the early intervention record collected, maintained, or used by the agency if the parent requests such information.

Parents may ask that records be amended. The System Point of Entry (SPOE) must decide whether to amend the information as the parent requested within a reasonable period of time of the receipt of the request; and, if the SPOE refuses, the SPOE must inform the parent of the refusal and advise the parent of the right to a hearing.

If, as a result of such a hearing, the information is found to be inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the SPOE will change the information and so inform the parent in writing. However, if, as a result of the hearing, the information is not found to be inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the public agency will inform the parent of the right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency in the child's record.

If the SPOE places a statement in the early intervention records of the child, the SPOE shall:

- (1) Maintain the statement with the contested part of the record for as long as the record is maintained; and
- (2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

## Resolution of Disputes: Complaints, Mediation, and Due Process Hearings

The Department of Health and Hospitals/OCDD maintains procedures for receiving, investigating, and resolving complaints relating to violations of Part C requirements. This process is administered through EarlySteps under the DHH, Office for Citizens with Developmental Disabilities (OCDD). DHH ensures that the parents of eligible children receive their rights and procedural safeguards upon referral to the system, including the rights regarding dispute resolution. EarlySteps uses the following procedures to resolve disputes:

### Complaints

#### Initiating Formal Complaints

Parents, service providers, advocates, support coordinators, members of the SICC, or employees of public agencies may file an individual complaint. A complaint **must** be in writing (a parent may call in a complaint and it will be set down in writing) and **must** contain the following information:

- A statement that the State has violated a requirement of Part C of IDEA or the regulations relating to the identification, evaluation, or educational placement of the child;
- The facts describing the alleged complaint; and
- The name, address, and phone number of the complainant and any applicable identifying information regarding the involved child, including available contact information in the case of a homeless child.
- The complaint must be made to the appropriate OCDD regional office/human services district/authority.

The alleged violation must have occurred not more than one year before the date that the complaint is received by EarlySteps unless a longer period is reasonable because:

- The alleged violation continues for that child or other children; or
- 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 EarlySteps.

IDEA regulations require that a written decision regarding a complaint must be made within sixty (60) calendar days of the receipt of the complaint. EarlySteps follows OCDD's complaint process which requires resolution of the complaint in 15 days. A decision letter will be mailed to the complainant. The decision letter will include the findings and conclusions and the rationale for the decision.

### TIMELINES

In resolving a complaint in which it finds a failure to provide appropriate services, DHH (**must** address how the denial of those services will be remedied-- including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family and appropriate future provision of services for all infants and toddlers with disabilities and their families.

If a written complaint is received that is also the subject of a due process hearing (see explanation of due process hearing in section which follows) or contains multiple issues, of which one or more of the issues are part of that hearing, DHH must set aside any part of the complaint that is being addressed in the due process hearing until

the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved within the 60-calendar-day timeline using the complaint procedures described above.

The findings related to the complaint shall constitute the final decision of DHH. This is communicated to the complainant. The Department of Health and Hospitals does not discriminate on the basis of race, color, creed, religious affiliation, national origin, age, sex, or disability in its programs, services, or employment practices. If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties:

- The hearing decision is binding; and
- DHH must inform the complainant to that effect.

A complaint alleging a public agency's or private service provider's failure to implement a due process decision must be resolved by the lead agency.

Anyone may make a complaint by calling the OCDD Regional Office or Human Service District/Authority for their area. The phone numbers are available on the OCDD website at <http://www.dhh.state.la.us/offices/page.asp?77&detail=3259>, calling your regional coordinator whose name can be found on the EarlySteps website or by calling the OCDD 800 number at 1-800-783-5553.

<b>Complaint Types</b>				
	Type of Complaint	Information Needed	Information Source	Responsible Party
<b>Violations of Part C - Related Issues</b>				
1.	Explanation of Benefits (EOB)	Progress Notes Related Data	Provider	Central Office QAS
2.	Other Service Related Complaints	Progress Notes Eligibility Documentation IFSP IFSP Revisions Related Data	Provider SPOE FSC	Regional/Central Office QAS
<b>Professionalism/Personnel Issues</b>				
1.	Staff/ Provider Complaints	* Collect any information provided and forward to Regional Office		
2.	Complaints regarding disputes between providers	Standard Complaint Letter	Regional /Central Office	Regional/Central Office

**Federal Performance Indicator 10: Percent of signed written complaints with reports issued that were resolved within the 60-day timeline. Target: 100%**

## **Mediation and Due Process**

Mediation and Due Process are two methods for parents to use when resolving issues about the early intervention services for their children. These methods for resolving conflict are formal processes protected by the Individuals with Disabilities Education Improvement Act (IDEA).

**What is Mediation?** Mediation is an attempt to bring a peaceful settlement or compromise between two or more parties through the objective intervention of a neutral party. Individuals trained as mediators facilitate this process. Mediation can be made available to resolve any dispute. In DHH mediation may also be called an Administrative Conference.

**What is Due Process?** Due Process is an administrative hearing where an impartial individual presides. This hearing provides the family of an individual child with the opportunity to challenge decisions made by EarlySteps. After hearing evidence from both the family and the appropriate EarlySteps representative, the hearing officer renders a binding decision.

### **Requesting Mediation**

Upon receipt of a request for a due process hearing, the parents are also offered the opportunity to mediate their dispute in a non-adversarial, impartial manner. Mediation is voluntary and parties must agree to mediation. Mediation will be provided at no cost to the family. Mediation does not deny or delay a parent's right to a due process hearing or to deny or delay any other rights afforded under Part C.

The parties must mutually agree to the selection of a mediator from the trained mediator list maintained by the DHH.

- Mediation must be scheduled within five (5) days of the selection of the mediator.
- Mediation must be conducted at a time and place mutually agreed upon by the parties.
- Mediation must be completed within thirty (30) days of the agreement to mediate.
- Any agreement reached during mediation must be in writing and signed by and delivered to each party.
- A lay advocate or legal counsel may accompany parents.
- Discussion held during a mediation session is confidential and cannot be used as evidence in a due process hearing or civil action held at a later date.

Parties have the right to seek mediation of their dispute outside the state mediation process and due process system. However, DHH pays for mediation only if the parties agree to it in connection with a due process request. Should the parties decide to mediate their disputes in the absence of a due process request, none of the state requirements for mediation apply. Parties to disputes involving any matter, including matters arising prior to the filing of a complaint may resolve such disputes through a mediation process.

### **Mediator Qualifications:**

- Mediators must be impartial and free of any conflict of interest.
- Mediators shall not be employees of a public or private agency that is involved in the early intervention services for the child and/or family.
- Mediators must have knowledge of laws and regulations relating to the provision of appropriate early intervention service to infants and toddlers with disabilities.
- Mediators must have a minimum of sixteen (16) hours of training as a mediator.

DHH maintains a registry of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education, early intervention, and related services. In DHH, this process is called an Agency Conference.

An Agency Conference may be requested by calling the EarlySteps Program Manager at 225-342-0095 or 1-800-783-5553.

## **Due Process/Appeal**

Due Process is an administrative hearing where an impartial individual presides to hear a complaint and decide how to resolve it. It may also be referred to as an Appeal or a Fair Hearing. This hearing provides the family of an individual child with the opportunity to challenge decisions made by EarlySteps. After hearing evidence from both the family and the appropriate EarlySteps representative, the hearing officer renders a binding decision.

The parties present evidence to an impartial hearing officer, who makes a decision based on the hearing officer's understanding of the facts and the law at issue. The hearing officer shall not be an employee of any state agency or service provider responsible for providing early intervention services to a child. There shall not be any personal or professional conflict of interest that would affect the hearing officer's objectivity in making a decision. DHH calls these hearing officers, administrative law judges. The only issue to be addressed at the hearing is the issue raised in the written request, unless agreed upon with the other party. The hearing must be requested within 2

years of the date the parent or agency knew about the alleged action unless a specific misrepresentation regarding the resolution of the complaint caused the delay.

Parents or legal guardians may initiate a due process hearing. A request must be sent in writing only and mailed to:

EarlySteps  
Due Process Request  
Louisiana Department of Health and Hospitals  
Office for Citizens with Developmental Disabilities  
628 North Fourth Street  
P. O. Box 3117  
Baton Rouge, Louisiana 70821-3117  
Attn: Program Manager

Or you may mail the request directly to the DHH Appeals Bureau at PO Box 4183, Baton Rouge, LA 70821-4183.

The notice requesting the hearing should include a description of the problem and a proposed resolution if known. EarlySteps and OCDD have a form which can be used for this purpose. The EarlySteps Office Coordinator receives, date stamps, and enters the complaint into the due process tracking system. Within 48 hours, the EarlySteps Program Manager reviews the request for due process and will instruct the EarlySteps Office Coordinator to send notification of receipt to the party. Within thirty (30) days of receipt of this statement, a hearing will be held to review the concerns.

### **Effect on Due Process Hearing Timelines**

The procedure for assigning a hearing officer and scheduling a due process hearing will occur simultaneously with the mediation process. In the event that the due process hearing is scheduled for a date prior to the date of the completion of the mediation, one or both of the parties will need to request, and obtain, an extension of the due process hearing time-line from the hearing officer (if the desire is to proceed with the mediation.) This is what I found in the complaint process

### **Appointment of an Impartial Person**

A hearing officer named by DHH will conduct the hearing. This person must have knowledge of the provisions of Part C, the needs of, and services available for eligible children and their families. They must perform the following duties:

- 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, and
- Provide a record of the proceedings, including a written decision.

### **Parents Rights in Administrative Proceedings**

DHH ensures that the parents of children eligible under this part are afforded the rights in this section in any administrative proceedings carried out under 34 CFR §303.420. Any parent involved in an administrative proceeding has the right to:

- Have the hearing held at a time and place that is reasonably convenient to you.
- Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for eligible children;
- Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;
- Obtain a written or electronic verbatim transcription of the proceedings;
- Have the hearing officer listen to the presentation from the parties involved, examine the relevant information, and reach a timely decision.
- Obtain written findings of fact and decisions.

Medicaid recipients may request a Fair Hearing to resolve issues regarding Medicaid payments or eligibility decisions. Medicaid Fair Hearings are limited in scope and may only address Medicaid eligibility services. Part C Due Process addresses decision points concerning eligibility for Part C, IFSP development, and IFSP implementation.

### Due Process Resolution

DHH, after deleting any personally identifying information, transmits the findings and final decision to the State Interagency Coordinating Council (SICC) and publishes the decision on the DHH website, thus making the findings available to the public.

### Civil Action

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in the state or federal court of jurisdiction.

### Status of a Child during Proceedings

While a proceeding is pending involving a complaint under this section (unless the public agency and parents of a child otherwise agree), the child must continue to receive the appropriate early intervention services currently being provided. If the complaint involves an application for initial services under this part, the child **must** receive those services that are not in dispute. The final decision will be mailed to the parties within thirty (30) calendar days after receipt of the request for a due process hearing.

**Federal Performance Indicator 11: Percentage of due process hearings that were fully adjudicated within applicable timelines. Target: 100%**

**Federal Performance Indicator 13: Percentage of mediations held that resulted in mediation agreements. Target: 100%**

## Child's Right to a Surrogate Parent

A Surrogate Parent is appointed by DHH for a child who is suspected of being or determined to be eligible for Part C when:

- The child has no identified parent, guardian, or person acting as a parent;
- The child has parents who, after reasonable efforts, cannot be located by a public agency; or
- The child is a ward of the state (living in a facility or group home).

An EarlySteps Surrogate Parent represents the parent perspective for children who do not have a parent or someone acting as a parent. Surrogate Parents may participate in all Part C activities related to the child whom they represent. They are the **developmental decision maker** for the IFSP.

For example, a grandparent, neighbor, friend, or private individual caring for the child with the explicit or implicit approval of the child's natural parent or guardian would qualify as "a person acting as a parent" of a child. **If such a person represents a child, a Surrogate Parent is not needed.**

If a child resides in a facility and **is not** a ward of the state, the child's parent(s)/guardian is the developmental decision maker for the IFSP and represents their child in all decisions relating to the child's early intervention just as if the child is residing at home. When a child resides in a parish that is different from his/her parent(s), residency for EarlySteps services is based on the parish where the child is residing, even when the child is residing in a facility. This means that the SPOE servicing the child's parish of residence will process the referral and proceed with intake, eligibility, and IFSP development.

Any person may advise a responsible public agency that an infant or toddler with a disability within its jurisdiction may be in need of a person to act as a Part C Surrogate Parent. This information is given to the SPOE for EarlySteps in their parish or region, or directly to the EarlySteps Central Office.

When the SPOE becomes aware of a child with a disability living within its jurisdiction that needs a Surrogate Parent, it shall, within ten (10) days, determine whether a Surrogate Parent should be appointed.

A request for the appointment of a surrogate shall be made within ten (10) days to the EarlySteps Central Office. The EarlySteps Central Office appoints a person to act as the Surrogate Parent within ten (10) days of receipt of the request. If a Surrogate Parent dies, resigns, or is removed, a replacement shall be appointed within fifteen (15) days, thereof.

In their role as the EarlySteps Surrogate Parent, he/she represents their assigned child in all decisions relating to the child's early intervention. Such decisions include matters regarding the identification, evaluation, placement (location of services) and provision of early intervention services.

### **Immunity from Liability**

The person appointed to act as an EarlySteps Surrogate Parent is immune from liability for any civil damage arising from any act or omission in representing the child in any decision related to the child's early intervention. This immunity does not apply to intentional conduct, wanton and willful conduct, or gross negligence.

### **Children under the Care and Custody of the State**

The EarlySteps Surrogate Parent and any state agency caseworker the child may have, such as OCS and OCDD must coordinate for the overall benefit of the child. It is imperative that communication occur between the Surrogate Parent and the caseworker regarding activities and events, and that both parties are kept fully informed of all relevant activities and commitments made on behalf of the eligible child.

The EarlySteps Surrogate Parent will represent a child in all matters related to evaluation and assessment, development and implementation of IFSP, including annual evaluations and periodic reviews, ongoing provisions of early intervention services, and all other rights established for the child. If a child is under the care or supervision of the state, the EarlySteps Surrogate Parent must not be confused with the assigned OCS caseworker responsibility under the laws of the state for the obligations of the department as a custodial parent.

An employee of the state, including OCS, OCDD, and any other caseworker for a child, cannot be assigned as a surrogate parent for a child, even if it is the child they currently serve as a caseworker. In addition, a person or employee of a person providing early intervention services to the child or to any family member of the child cannot be assigned as the surrogate parent for that child.

**A person who otherwise qualifies to be a surrogate parent is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.**

In Louisiana, the child's foster parent acts as a parent for the purposes of Part C. Foster parents may access family training through Part C in order to understand and fulfill their roles and responsibilities appropriately.

**A Surrogate Parent is not needed when a child has a foster parent.**

### **System Point of Entry (SPOE) Responsibilities for EarlySteps Surrogate Parents**

The SPOE, as the responsible public agency, shall designate a staff member who will be responsible for the EarlySteps Surrogate Parent program in their geographic area. This individual must complete and return to DHH a **Surrogate Parent Determination Form** for each child believed to be in need of an EarlySteps Surrogate Parent.

<b>Other Procedural Safeguards: Accept or Decline Services</b>
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Parents of eligible children have the right to determine whether they, their child, or other family members will accept or decline any early intervention service. They may also decline services after first accepting them without jeopardizing other early intervention services.

Parents can change their minds. They do not have to accept all services recommended by the IFSP team. **Support Coordination is the exception**—the IFSP requires that the name of the support coordinator be listed. This means every child has a support coordinator. If a family refuses Support Coordination, they must understand that this means they are choosing to not participate in the public Part C system.

## Refuse to Complete/Sign Documents

It is the parents' right to refuse to complete/sign any document presented to them by EarlySteps. If a family refuses to complete/sign any document, the IC/FSC must inform the family of the consequences of the refusal, such as possible delays or not being able to proceed to next steps. The IC/FSC must document the family's refusal to sign in the FSC minutes in the section: Areas of Disagreement/Resolution

**Federal Performance Indicator # 4 and targets:  
Percentage of Families reporting that early intervention services have helped the family:**

- A. Know their rights (75%)**
- B. Effectively communicate their child's needs (73%); and**
- C. Help their children develop and learn (87%).**

## Freedom of Choice

Louisiana assures that families have freedom of choice in the selection of an available service coordination agency, a qualified service coordinator, and/or other service providers and the right to change providers or service coordinators.

EarlySteps will offer families a provider choice list using the service matrix for service coordination and other service providers. Families are asked to sign a Provider Selection Form which verifies that they have been offered a choice and who their selected provider is.

## Evaluation and Assessment

EarlySteps ensures that all eligible children will receive early intervention services without regard to race, culture, religion, disability, or ability to pay. Eligibility is decided by an evaluation of the child (within 45 days of referral). Information from at least two or more qualified professionals gathered about your child's medical history, development, and current abilities is examined. This is the multidisciplinary evaluation to determine eligibility. If there is a need for more information, you will be informed about this. This additional information gathering does not change the 45-day timeline that EarlySteps must meet to have a plan in place for your child if eligible. If you do not consent in writing to this evaluation to determine eligibility, your child and family will not receive the evaluation, assessment and early intervention services provided by EarlySteps. If the child is eligible for services, the child and family also have the right to ongoing assessments of the child's strengths, skill levels, progress, and needs. The evaluation is available to you at no cost.

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## Individualized Family Service Plan

Within 45 days of the referral, each eligible child and family must have a written Individualized Family Service Plan (IFSP) for providing early intervention services that includes the family's concerns, priorities, and resources for their child. Information from you about your child is critical to EarlySteps for making good decisions in developing outcomes in the IFSP. The IFSP is written for a year and is reviewed at least every six months. It includes the major outcomes for the child and family, how progress will be measured, what and where services will be provided, when they will begin and for how long, methods of payment, if any, and transition at various times throughout the process and upon the child's third birthday. Families have the right to be invited to and participate as a team member in all meetings in which a decision is expected to be made regarding their child.

They have the right for their child to receive early intervention services in *natural environments* to the extent appropriate to meet the child's developmental needs. Families have the right to have services start within 30 days from the date consent is given.

## **RECOMMENDED PRACTICE: PROVIDING PROCEDURAL SAFEGUARDS INFORMATION TO FAMILIES**

While regulations require that a copy of the Parents Rights statement be provided to families at certain points in the process, a simple listing of their rights does not always convey the meaning of these protections. Each of the procedural safeguards has implications for a family's experience with the early intervention system. For this reason, it is recommended that both an oral and written explanation, in their native language, of the procedural safeguards be provided at multiple points in the family's involvement with the Part C system. Repetition is helpful because the information is complex. Families want to hear and discuss their rights several times in order to fully understand them.

At appropriate times during the process parents should be informed (both verbally and in writing) of the following rights:

- The right to a timely, multidisciplinary assessment;
- The right, if eligible, to appropriate early intervention services for the child and family;
- The right to refuse evaluations, assessments, and services;
- The right that notice be provided before a change is implemented or refused in the identification, evaluation, placement or location of the child and family services, or in the provision of early intervention services to the child or family;
- The right to confidentiality with respect to personally identifiable information;
- The right to review and request the correction of early intervention records;
- The right to utilize an advocate or attorney in any and all dealings with the early intervention system; and
- The right to utilize administrative and judicial processes to resolve complaints.

Procedural safeguards are parameters that increase the likelihood of families accessing more appropriate and effective early intervention services to support them in impacting their child's development. Explaining these rights is best done when it is in the flow of conversation and in everyday language. Explaining the basis for the regulation may help parents understand this **legalese**.

The following are examples of how to explain procedural safeguards:

### **The right to confidentiality of personally identifiable information:**

"We really value your privacy. No one will tell others about your family or child unless we have asked you first, and you have given us written permission. "

### **The right to refuse evaluations, assessments and services:**

"We want these services to really work for you. Take a few days and think about what is comfortable for you at this time. Everything does not have to happen all at once. You may want to wait to start some of the services or to do an assessment. Also remember, it is okay to say no."

### **The right to review records and request corrections:**

"You can look at your child's record at the SPOE at any time. Remember that this record contains information about your child and family that service providers read. If you see anything that you feel is wrong or misleading, you can ask the SPOE to change it."

**Intake Coordinators and Family Support Coordinators should practice how to explain the procedural safeguards to families so that the explanations come easily in everyday language.**

Reference:

Hurth, Joicey and Goff, Paula, *Assuring the Family's Role on the Early Intervention Team: Explaining Rights and Safeguards* (2<sup>nd</sup> edition) Chapel Hill, NC: National Early Childhood Technical Assistance Center, June 2002.

Available at <http://www.nectac.org>.