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Component: 8.0 Procedural Safeguards

Related Policy Component	Guidance/Procedures	Reference/Related Documents
8.1.0 Minimum Procedures		
8.1.1	<p>Explanations of rights and procedural safeguards should be a part of the service coordinator's and service provider's ongoing conversations with families and should be documented in the Early Steps record. Although some rights and procedural safeguards (e.g., prior written notice) can be explained when they occur in the early intervention process, others (e.g., right to request mediation) need to be explained from the beginning in case a family may need them. Alternative methods, such as videotapes and brochures may be used to assist in providing explanations to families; however, they should not replace verbal explanations.</p>	
8.2.0 Confidentiality and Opportunity to Examine Early Steps Records		
8.2.3	<p>If there are concerns regarding the confidentiality of foster parents, the names in the record may be redacted.</p>	
8.2.6	<p>IDEA, Part C and FERPA do not require the distribution of copies of an Early Steps record upon request, but rather parental access to inspect and review the Early Steps record.</p>	
8.2.21	<p>A. Although the LES would respond to reasonable requests for explanations and interpretations of Early Steps records, a test protocol or question booklet which is separate from the sheet on which responses are recorded, and which is not personally identifiable to the child, would not be part of his or her Early Steps record.</p> <p>B. The explanation and interpretation by the LES could entail showing the parent the test question booklet, reading the questions to the parent, or providing an interpretation for the responses in some other adequate manner that would inform the parent.</p>	
8.2.23	<p>LES does not have to log/maintain request for access to and disclosure of personally identifiable information when the request is from or disclosure is to the parent(s), LES</p>	

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	or ESSO officials.	
8.2.27	<p>Each LES' host organization or entity is responsible for developing its own HIPAA forms and other materials that it determines are necessary to ensure compliance with HIPAA regulations.</p> <p>Specific questions regarding HIPAA regulations and compliance should be directed toward your host organization or entity which is responsible for determining how your organization or entity must comply with the HIPAA regulations.</p>	<p>HIPAA and IDEA Chart</p> <p>Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and Health Insurance Portability and Accountability Act of 1996 (HIPAA)</p>
8.4.0 Prior Written Notice		
8.4.1	<p>A. Federal regulations require notification to be provided in a “reasonable time” before a change is made. When a change is agreed upon during an IFSP meeting, a properly completed IFSP Form G serves as the prior written notice. In situations in which the service coordinator finds out about a service change after it is implemented, prior written notice should be immediately provided and the circumstances surrounding the late notice should be documented in the service coordinator’s notes in the Early Steps record.</p> <p>B. Prior written notice must be provided even when the family was involved in the decision-making. When a change is agreed upon during an IFSP meeting, the notice would be provided to the family at that time in the form of the fully completed IFSP.</p> <p>C. Occurrences, which are subject to prior written notice, include:</p> <ol style="list-style-type: none"> 1. Initial evaluation and eligibility determination. 2. New, changed or terminated services or locations. 3. Change in type, frequency, intensity or duration of services. 4. Refusal to change or initiate a particular service, provider or location. 5. Termination from Early Steps. 	<p>Early Steps IFSP Instructions for Completing the Early Steps IFSP Form G</p>
8.4.5	The completed IFSP, Form G , serves as prior written notice when a new, changed, or terminated service is agreed upon as a result of periodic review of the IFSP.	<p>Early Steps IFSP Instructions for Completing the Early Steps IFSP Form</p>

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	modification for services.	
8.5.4	If a parent revokes consent , that revocation is not retroactive. The revocation does not negate any action that occurred after consent was given and before the consent was revoked.	
8.5.6	When there is a request by subpoena to release confidential information, the agency receiving the subpoena should notify their legal counsel.	
8.5.8	<p>A. Based on parent's preference, consent can be obtained via electronic methods including fax, stylus, email, and text.</p> <p>B. Consent obtained electronically must be authenticated as the parent(s) and a description of the process for verification that the parent is the source of the consent must be documented in the record.</p> <p>C. It is acceptable for consent to be obtained directly on either Forms G or H and faxed and/or scanned from the parent(s).</p> <p>D. Consent obtained electronically but not on Forms G or H must:</p> <ol style="list-style-type: none"> 1. Include the name and date indicating consent provided/entered directly from the family; 2. Include all the actions that the family has been fully informed of and is consenting to; 3. Include a statement from the family indicating they have been provided with prior notice, including procedural safeguards, and understand the reason(s) for taking the action(s) when prior notice is required. It must be documented in the record that prior notice, including procedural safeguards, was provided and explained; 4. Apply only to the action for which the parent is consenting; not a past or future action; and 5. Be printed and attached to the IFSP in the record and provided to the parent(s). <p>E. The technology used to provide consent electronically must be accessible and preferred by the parent(s) and compatible with technology</p>	

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	available to the LES.	
8.8.0 Assignment of a Surrogate Parent		
8.8.1	Following the assignment of a surrogate parent , the LES should contact the local FDLRS center to access surrogate parent training.	
8.8.3	Consultation can occur by telephone, e-mail, or other means consistent with confidentiality requirements.	
8.8.5 8.8.6 8.8.7	<p>A. The surrogate parent's assignment is to provide the child with an objective individual who will look out for the child's interest when the <u>only</u> other available entity is an "agency" or "paid administrator."</p> <p>B. The surrogate parent is not the legal guardian and as defined in the IDEA, Part C does not assume the responsibilities of the Department of Children and Families (DCF) for children in the custody of DCF which are much broader.</p> <p>C. A surrogate parent would be assigned only if the foster parent is not willing to ensure services.</p> <p>D. The surrogate parent shall become acquainted with the child and be knowledgeable about his/her developmental delay or disability and needs.</p> <p>An individual's appointment as a guardian ad litem does not prohibit that person from acting as a surrogate parent if they meet the legal criteria listed in § 300.519 and Rule 6A-6.0333, FAC. When the court assigns a person to act as the guardian, it is acceptable for that person to consent to the evaluation and delivery of early intervention services.</p> <p>E. The surrogate parent shall continue in the appointed role until one of the following circumstances occurs:</p> <ol style="list-style-type: none"> 1. The child is determined to no longer be eligible or in need of early intervention services, except when termination of services is being contested. 2. The legal guardianship of the child is assigned to a person who is able to carry out the role of the parent. 3. The parent, who was previously unknown, becomes known; or the whereabouts of a parent which was previously undiscovered, is discovered. 4. The appointed surrogate parent no longer wishes 	

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	<p>to represent or is unable to represent the child.</p> <p>5. The lead agency or public agency determines that the appointed surrogate parent no longer adequately represents the child.</p> <p>6. The child moves to a geographic location, which is not reasonably accessible to the appointed surrogate parent.</p>	
8.9.0 Right to Mediation		
8.9.1	<p>The ESSO will:</p> <p>A. Provide informational materials to parents, early intervention personnel, and advocates interested in mediation.</p> <p>B. Provide technical assistance to parents, LES staff, service providers, and advocates for their consideration and/or preparation for mediation.</p> <p>C. Evaluate and monitor the effectiveness of early intervention mediation services for parents and early intervention personnel in Florida.</p> <p>D. Obtain the services of trained mediators through an agreement with the Florida Department of Education.</p> <p>E. Pay the mediator's fee, travel, per diem, and communication costs.</p> <p>F. Provide in-service training for early intervention mediators.</p>	<p>Early Steps Mediation Brochure</p> <p>Early Steps Comparison of Mediation, Complaints and Due Process Hearing</p>
8.9.3	<p>The mediation process may be an intervening step after a due process hearing has been requested or it may be offered prior to a request for due process hearing or the filing of a complaint.</p> <p>The parties should be informed and/or aware that mediation:</p> <p>A. Is confidential and the parties must sign a Confidentiality Agreement.</p> <p>B. Promotes positive working relationships between parents and LES personnel.</p> <p>C. Requires give-and-take of ideas and offers before an agreement can be reached.</p> <p>D. Is used to clarify issues causing disagreement and stimulates mutual problem-solving efforts.</p>	

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	<ul style="list-style-type: none"> E. Provides uninterrupted opportunities to present points of view. F. Allows their positions and/or views related to the dispute to be clearly outlined. G. Allows the opportunity to consider solutions that may be either short-term or long range. H. Allows the opportunity for the parties to state what they want from or are proposing for the other party. I. Should focus on the child's needs. Finding fault, fixing blame, or making accusations sidetrack the aim of mediation and should be avoided. J. Is likely to be successful when participants, in addition to parties to the dispute, have knowledge of the child and the child's needs or specialized knowledge of the issues(s) in dispute. K. Operates effectively when the mediator makes the final decision as to who attends the mediation session. L. Allows the opportunity to develop a list of alternatives or solutions that could be offered to settle the dispute, starting with the most important item first. M. If either party is dissatisfied with the decision reached in the mediation, a due process hearing can be requested. 	
<p>8.9.7</p>	<p>The mediator is a neutral party who:</p> <ul style="list-style-type: none"> A. Is knowledgeable about state and federal laws related to early intervention services for infants and toddlers with special needs. B. Is experienced with and effective in applying conflict resolution procedures, problem-solving approaches, and communication skills relating to interpersonal relationships. C. Is concerned about children with special needs and their right to appropriate early intervention services. D. Is sufficiently removed both personally and professionally from the early intervention service area. E. Acts as a facilitator to assist parents and early intervention personnel to reach an agreement. 	

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	<ul style="list-style-type: none"> F. Listens to each party's view of the problem. G. Reviews records and documents as necessary. H. Helps identify issues to be mediated. I. Seeks statements from each party as to their position or points of disagreement, requesting clarification as necessary. J. Emphasizes present aspects of the case, limiting discussion of the past to that necessary for understanding and planning. K. Keeps discussions confidential. L. Helps both parties make suggestions and delineate areas of agreement. M. Works with both parties to guide them toward a mutually satisfactory solution that meets the best interest of the child. N. Does not resolve the dispute. 	
<p>8.9.10</p>	<p>During the mediation session, both parties should:</p> <ul style="list-style-type: none"> A. Approach the mediation in good faith, with the intention of reaching an agreement on issues, outcomes, and/or total resolution of the dispute. B. Present their view, including all relevant information. Mediation is not intended to be confrontational or adversarial. Each party should freely speak for himself or herself, using a problem-solving approach, to resolve the issues. C. Meet separately with the mediator during the session in case the parent wants to present sensitive material to the mediator privately. D. Ask for clarification whenever material or a point of discussion is not understood. E. Actively participate in the session and in designing the mediation agreement. 	
8.10.0 Right to Due Process Hearing		
<p>8.10.2</p>	<p>ESSO shall maintain a copy of the current Directory for Florida Legal Services, Inc. published by:</p> <p>Florida Legal Services, Inc. 2425 Torreya Drive Tallahassee, FL 32303</p>	

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	<p>Phone: (850) 385-7900 Fax: (850) 385-9998</p>	
8.10.3	<p>The mediation process may be offered prior to a request for due process hearing or the filing of a complaint.</p>	
8.10.6	<p>The ESSO will send to the parties in the due process dispute roles and responsibilities of the parties in a due process hearing. This will be done via registered, certified or hand delivered mail.</p> <p>The ESSO will send a copy of all correspondence, i.e., the hearing request and the notification letter to the parents, to the Department of Health, Office of the General Counsel.</p> <p>The Department of Health, Office of the General Counsel will forward copies of all correspondence, the hearing request and the notification letter to the parents to the Division of Administrative Hearings at:</p> <p>The Director The Desoto Building Division of Administrative Hearings 1230 Apalachee Parkway Tallahassee, Florida 32399</p>	<p>Early Steps Comparison of Mediation, Complaints and Due Process Hearing</p>
8.10.8	<p>There is no requirement that the party who alleges that the hearing request is insufficient state in writing the basis for that allegation.</p>	
8.10.10	<p>A. When a request for a hearing is made, the LES is responsible for coordinating with ESSO due process matters and for managing the details involved in preparing for a hearing.</p> <p>B. The due process coordinator may or may not be the LES program spokesperson at the hearing.</p> <p>C. The director of each LES will determine who will serve in that capacity.</p> <p>D. Parents and the LES will need to determine who will be their respective spokespersons or representatives during the hearing. Each party may choose to represent themselves or to seek legal counsel.</p> <p>E. If the parents wish to be represented by another individual who is not an attorney, such as a local child advocate, that individual must present himself</p>	

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	<p>to the hearing officer for approval. The hearing officer will question the individual to determine his or her familiarity and experience with the following areas:</p> <p>F. Children with special needs and procedures used in the due process hearings.</p> <p>G. Federal and state laws and rules related to children with special needs.</p> <p>H. The hearing officer will decide whether the individual possesses knowledge and skills necessary to fairly and competently represent the parents and the child's interests.</p> <p>I. Tasks to be completed by the parents in preparation for the hearing:</p> <ol style="list-style-type: none"> 1. Organize their evidence. 2. Decide who they will call as witnesses. 3. Check with their witnesses to be sure arrangements are clear. 4. Decide what testimony will be presented. 5. Anticipate questions that will be asked of them and their witnesses and how those questions will be answered. 6. Prepare questions to ask LES' witnesses concerning their testimony and the evidence presented by the Local Early Steps. 7. Decide whether the child will be present. 8. Develop questions to ask witnesses. 9. Contact legal counsel if the process seems overwhelming. <p>J. Tasks to be completed by the Local Early Steps in preparation for the hearing:</p> <ol style="list-style-type: none"> 1. Gather, sort, and systematically organize data and Early Steps records. 2. Organize the evidence into exhibits. 3. Determine the main issues. 4. Decide position on the issues. 5. Prepare witnesses for testimony. 6. Develop questions to ask witnesses. 	
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	<p>7. Develop cross-examination questions.</p> <p>K. Information prepared for and given to the hearing officer, will include:</p> <ol style="list-style-type: none"> 1. A copy of the child's Early Steps records. 2. A chronological appendix. 3. A list of witnesses. 4. An order of witness testimony. 5. A list of exhibits. <p>L. A meeting should be arranged for the preparation of witnesses who will give testimony related to the exhibits introduced as evidence. The persons attending the meeting include Early Steps witnesses, Early Steps attorney and the local due process coordinator. The meeting should be scheduled approximately a week to ten days prior to the scheduled hearing date. The purpose of the meeting is to inform the witnesses of:</p> <ol style="list-style-type: none"> 1. Hearing procedures. 2. What to expect at the hearing. 3. What will be expected of them. 4. The questions that might be asked of them. 5. How their testimony is related to the exhibits. 6. The responsibilities and parameters by which they will testify. 7. Informative articles, booklets, or pamphlets regarding due process hearing, especially the role of a witness. 8. The order of witness testimony. 9. Witnesses should be informed that a lunch break may not be scheduled due to the time constraints of the hearing officer. <p>M. The LES' attorney should prepare the LES witnesses to:</p> <ol style="list-style-type: none"> 1. State their professional credentials, certification, and training. 2. State their experience, relative to their position, title, and current status in the early intervention system of the child in question. 3. Know their job description and be able to verbally 	
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	<p>relate how it applies to the day-to-day early intervention process.</p> <ol style="list-style-type: none"> 4. Make statements about the unique needs of the child. 5. Explain terms specific to the early intervention process. 6. Bring any documents or supportive information that may be helpful and refer to them during their testimony. 7. Know what is contained in the child's Early Steps records about which they may be asked questions. 8. Answer any questions that relate to the child's Early Steps records. 9. Anticipate questions about their evidence and testimony and be prepared to answer those questions. <p>N. Witnesses who have evaluated the child should be prepared to:</p> <ol style="list-style-type: none"> 1. Discuss the kinds of evaluation instruments and methods used in arriving at the conclusions concerning the child's developmental and behavioral abilities. 2. Discuss the reliability and validity of evaluative materials used. 3. Bring evaluation manuals in order to support that scoring and interpretation was in accordance with the instrument directions. <p>O. The hearing officer will decide if a witness is an "expert." An expert witness is a person who by reason or specialized experience possesses superior knowledge about a subject. An expert witness can draw conclusions, offer opinions, and answer hypothetical questions. Either party may rely upon expert witnesses. Expert witnesses will receive the same mileage and per diem reimbursement rate established within the statutory requirements of reimbursement for early intervention business. If the hearing officer deems it necessary to call in an expert witness, compensation of the per diem and mileage of regular witnesses might be necessary. Lost salary will not be reimbursed.</p> <p>P. Either party may call witnesses as deemed</p>	
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	<p>appropriate.</p> <p>Q. When a parent requests that a service provider or Local Early Steps staff person be a witness, the Local Early Steps should facilitate such a request, understanding that this can become a delicate situation for the witness who would be testifying against the agency that employs or pays him. Local Early Steps should be careful that there is no unintentional retaliation regarding an opposing witness' status as an employee or service provider.</p> <p>R. Depositions may be taken by attorneys in order to mediate a case or may be used to identify and narrow the issues for the hearing.</p> <p>S. The hearing officer can issue a subpoena upon request and for good cause shown, i.e., the testimony or document is important to material issues at the hearing.</p> <p>T. Disclosure of Information should be disclosed at least five (5) days prior to the hearing.</p> <p>U. The hearing officer or either party may request a resolution session when it is practical to do so. This session would take place prior to the hearing; the time span may be from two (2) weeks to just prior to the hearing. This session is advisable although it is not always practical or feasible, due to increased costs, i.e., time travel, and fees. It is the responsibility of the LES to make the necessary arrangements for the resolution session and confirm the arrangements with the hearing officer and the parents. At the resolution session, the hearing officer may require that the Local Early Steps and parents meet and prepare a stipulation (a reduction in writing) identifying the issues and the evidence; or the hearing officer, Local Early Steps and parents might meet to discuss this information.</p> <p>V. Upon arrival at the appointed place, the hearing officer may:</p> <ol style="list-style-type: none">1. Check whether all necessary arrangements have been made for the hearing.2. Greet participants as they arrive and indicate where they should sit. Usually, Early Steps personnel are seated on one side of a conference table, with the parent group on the opposite side.3. Select a seat at one end of the table.	
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	<p>4. Have the person recording choose the place s/he has determined to be the best for recording purposes.</p> <p>W. Prior to the preparation meeting with witnesses, the LES due process coordinator or the LES attorney should:</p> <ol style="list-style-type: none"> 1. Summarize the case in writing. 2. Discuss any inconsistencies that have been noted in the review of the Early Steps records (e.g., witnesses may be misleading in their own perceptions of the child as compared to what is documented in the child's Early Steps records). 3. Instruct witnesses to use the same terms and language as recorded in the Early Steps records; agree on the issues, problems, and concerns; and be consistent in their testimony. 	
<p>8.10.22</p>	<p>An impartial hearing officer also implies that the individual:</p> <ol style="list-style-type: none"> A. Has not been previously involved in any decision regarding the child's identification, evaluation or services. B. Is accountable for all deadlines and procedures in the statutes and rules concerning due process hearings. C. Ensures that all information is disclosed at least five days prior to the hearing. D. Is over the age of majority. 	
8.11.0 Right to File a Complaint		
<p>8.11.5</p>	<p>After the written, signed complaint is received by the ESSO in Tallahassee, Florida, the ESSO will:</p> <ol style="list-style-type: none"> A. Determine if the complaint meets the requirements in 8.11.5. B. Acknowledge receipt of the complaint with a letter to the complainant and the LES agency, other public agency or service provider that summarizes the issue(s) and includes a statement regarding the refusal of mediation, if the complaint meets the requirements in 8.11.5. C. Notify the complainant in writing of the insufficiency of the complaint if it does not include the requirements in 8.11.5. 	

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	The date that the complaint is initially received by the LES or the ESSO begins the 60 calendar day time limit.	
8.11.6	If the LES is not sure if the content meets the requirements of a complaint as stated in Policy Handbook 8.11.5 , then the LES should still send the letter to ESSO for a decision as to whether the content meets the requirements of a complaint.	
8.11.7	The request and acceptance of ongoing mediation when a complaint is filed, in and of itself may not constitute exceptional circumstances to extend the complaint resolution timelines. If the parties do not agree that the complaint resolution timeline should be extended pending completion of mediation, the ESSO will continue activities to resolve the complaint.	Early Steps Comparison of Mediation, Complaints and Due Process Hearing
8.11.11	The ESSO has the responsibility to review the preliminary report issued by the investigating team, if one has been appointed, prior to issuing the report to the complainant and other parties. If after the preliminary report is issued, the complainant or other party/parties are not satisfied with the findings of the ESSO, additional information, including the issue(s) in dispute, should be sent in writing to the ESSO within 10 days of receipt of the preliminary report.	Sample Content and Format of Preliminary Report
8.11.12	If exceptional circumstances exist, such as the need for a legal opinion about a complex allegation, a large number of allegations or extremely complex allegations, the ESSO may extend, for a reasonable period, any timelines set forth in the complaint procedures. The ESSO decision to determine exceptional circumstances and extend for a reasonable period, any timelines set forth in the complaint procedures, will be made on a case-by-case basis. If the timeline extension is parent-related (e.g., parent requests more time to review preliminary report, parent/child is in hospital, etc.), ESSO should not report this as a missed timeline when reporting dispute resolution data under Part C of IDEA to OSEP. However when the timeline is missed for administrative reasons, ESSO will report data to OSEP indicating a missed timeline.	Sample Content and Format of Final Report Sample Written Decision
8.11.15	The ESSO will inform any affected parties of any findings of non-compliance and ensure that corrective action is implemented to bring about compliance with the Part C of	

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	<p>IDEA. The ESSO will ensure that any necessary corrective action resulting from a complaint decision is completed within a reasonable period of time.</p> <p>In order to ensure effective implementation of the final decision, the ESSO will offer appropriate technical assistance activities, mediation, and negotiations, if needed.</p>	
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