

**PARENT RIGHTS FOR SOONERSTART  
SERVICES  
NOTICE OF PROCEDURAL SAFEGUARDS**



**The Individuals with Disabilities Education Act  
IDEA - Part C  
Program for Early Intervention services  
Oklahoma State Department of Education  
Revised - December 2012**

# SoonerStart Early Intervention Program

## Parents Rights for SoonerStart Services:

### Notice of Procedural Safeguards

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# Procedural Safeguards

## Introduction:

Procedural safeguards represent one of the most important protections for children and families within the early intervention system. Federal regulations recognize that families need to be involved personally every step of the way. Providing families with the procedural safeguards and family rights helps ensure that families are involved in the decision-making process regarding services for their child. Rather than being a stand-alone activity, procedural safeguards are best offered to families within the process of participation.

SoonerStart implements the following policies and procedures and enforces failure to comply with these requirements and the requirements in IDEA, Part C through its dispute resolution processes and General Supervision procedures.

## Definitions:

1. SoonerStart Early Intervention Program - Oklahoma's Early Intervention Program for infants and toddlers, birth to 36 months, who have developmental delays and their families.

As used in this definition, SoonerStart includes all employees, contractors and other individuals associated with SoonerStart, who are involved with children and families, either directly or indirectly, referred to and/or enrolled in the SoonerStart Early Intervention Program.

2. Consent is when a parent:

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consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

3. Destruction means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable.

4. Disclosure means to permit access to or the release, transfer, or other communication of personally identifiable information contained in early intervention records, to any party, except the party that provided or created the record, by any means, including oral, written or electronic.

5. Early Intervention Record means all records regarding a child that are required to be collected, maintained, or used in SoonerStart. Records include, but are not limited to, handwriting, print, computer data, video or audio, tape, film, microfilm and microfiche.

6. Native language, when used with respect to an individual who is limited English proficient or LEP means:
- A. the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in B. below; and
  - B. for evaluations and assessments, the language normally used by the child, if determined developmentally appropriate by qualified personnel conducting the evaluation or assessment.

Native language when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).

7. Parent is defined as:
- A. a biological or adoptive parent of a child;
  - B. a foster parent, unless Oklahoma law, regulations, contractual obligations with an Oklahoma or local entity prohibit a foster parent from acting as a parent;
  - C. a guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health, or developmental decisions for the child (but not the State if the child is a ward of the State);
  - D. a person acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or a person who is legally responsible for the child's welfare; or
  - E. a surrogate parent who has been appropriately appointed.

8. Personally Identifiable Information includes, but is not limited to, the following:
- A. the name of the child, the child's parent or other family member;
  - B. the address of the child or child's family;
  - C. a personal identifier, such as the child's or parent's social security number or child number;
  - D. a list of personal characteristics or other information that would make child's identity easily traceable; and/or
  - E. other information that would make the child's identity easily traceable.

*(Authority: 20 U.S.C. §1401(23); 34 C.F.R. Part 99; 34 C.F.R. §303.7, -.27 -.123, -.400, -.403, and -.449; 34 C.F.R. §99.3)*

**Confidentiality:**

- 1. Parents referred to SoonerStart are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with State and Federal laws.
- 2. SoonerStart's confidentiality policies and procedures apply to the personally identifiable information of a child and that child's family that:
  - A. is contained in early intervention records collected, used, or maintained by SoonerStart;

B. applies from the point in time when the child is referred for early intervention services until the later of when SoonerStart is no longer required to maintain or no longer maintains that information under applicable Federal and State laws.

3. SoonerStart ensures the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained by SoonerStart.

4. SoonerStart's policy for protecting the privacy of children and families is aligned with the Family Educational Rights and Privacy Act (FERPA), as required under IDEA, 34 C.F.R. §303.401, and which is incorporated herein by reference.

5. The SoonerStart Service Coordinator provides, in writing and verbally, a parent's rights with regard to the confidentiality of early intervention records.

6. SoonerStart and contractors must protect personally identifiable information which is collected, used, or maintained concerning a child enrolled in SoonerStart, the child's parent, or another family member.

*(Authority: 20 U.S.C. §§1232g, 1439(a)(2), and 1442; 34 C.F.R. §303.401-402)*

### **Notice to Parents:**

1. SoonerStart must ensure notice to a parent of a child referred to the program that is adequate to fully inform the parent about the confidentiality requirements of IDEA, Part C including:

A. a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

B. a summary of the policies and procedures that SoonerStart must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;

C. a description of all the rights of parents and children regarding this information, including their rights under IDEA, Part C confidentiality provisions; and

D. a description of the extent that the notice is provided in the native languages of the various population groups in the State.

2. The SoonerStart service coordinator ensures a parent is provided and has access to the SoonerStart Parent Rights and Procedural Safeguards handbook, which outlines SoonerStart policies and procedures about confidentiality.

3. Parents are notified annually, through the SoonerStart Parent Rights and Procedural Safeguards handbook, of their right to:

A. Inspect and review their child's records, including the procedures to exercise this right;

B. Seek amendment to the records, including the procedures to exercise this right;

C. Consent to disclosures of personally identifiable information in their child's records; and

D. File a complaint with the United States of Department of Education, Family Policy Compliance Office concerning alleged failures to comply with the requirements under FERPA.

## **Records:**

### **Access to Records**

1. A parent is entitled to inspect and review any early intervention records relating to their child that are collected, maintained, or used by SoonerStart. The Service Coordinator is responsible for explaining to a parent his or her rights to inspect, review, and have a copy of his/her child's early intervention records. This information is also included in the SoonerStart Parent Rights and Procedural Safeguards handbook and shared with the family during the Intake process. The program must comply with the parent's request to inspect and review records without unnecessary delay and before any IFSP meeting or IDEA, Part C dispute resolution proceedings, and in no case more than 10 calendar days after the request has been made.
2. The right to inspect and review early intervention records includes the right to:
  - A. a response from the agency to reasonable requests for explanation and interpretation of the early intervention records;
  - B. request that the agency provide copies of the early intervention records containing information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
  - C. have a representative of the parent inspect and review the early intervention records.
3. SoonerStart may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been provided documentation that the parent does not have authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce.
4. If an early intervention record includes information on more than one child, the parents of those children have the right to inspect and review only information relating to their child or to be informed of that specific information.
5. SoonerStart must provide at no cost to parents a copy of each evaluation, assessment of the child, family assessment, and IFSP. The service coordinator sends a parent copies of any evaluation, child assessment, family assessment and the IFSP (including any reviews) within ten (10) calendar days of written completion of the document reflecting those events.
6. A parent must request in writing, unless unable to do so, that s/he would like to obtain a copy of his/her child's early intervention records SoonerStart must make available the records requested within 14 calendar days. Shorter periods of time will be considered on a case by case basis. Reasonable fees may be charged for copying records, (except as outlined above) requested by a parent as long as the fee does not effectively prevent the parent from exercising his or her right to inspect and review the records.
7. Fees may not be charged to a parent for the search and/or retrieval of the records.

8. For requests by parents for records when the child is no longer in the program, SoonerStart will take reasonable steps to ensure the individual requesting the record has the legal authority to obtain the records.
9. SoonerStart must keep a record of parties obtaining access to early intervention records collected, maintained, or used under IDEA, Part C (except access by parents and authorized representatives and employees of SoonerStart), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.
10. SoonerStart will provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the program.
11. SoonerStart must keep within the child's file a Confidential Record access and record release (disclosure) log, which is accessible to parents. When records are released, the following information must be recorded:
  - A. The date records are released;
  - B. Agency/person to whom the records were released;
  - C. The purpose of release;
  - D. Verification that consent is on file and up to date; and
  - E. The records that are released.

*(Authority: 20 U.S.C. §1232, et seq. (FERPA) and 34 C.F.R. §303.405 - 413)*

#### **Amendment to Records**

1. A parent who believes that information in the early intervention records collected, maintained, or used by SoonerStart is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the agency that maintains the information amend the information.
2. Upon receipt of a request to amend an early intervention record, the agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
3. If the agency refuses to amend the information as requested by the parent, it must inform the parent of the refusal, in writing, and advise the parent of the right to a hearing.

*(Authority: 34 C.F.R. §303.410-411)*

#### **Consent to Disclose Records**

1. Prior parental consent must be obtained before personally identifiable information is:
  - A. disclosed to anyone other than authorized representatives, officials, or employees of SoonerStart collecting, maintaining, or using the information under IDEA, Part C; or
  - B. used for any purpose other than meeting a requirement under IDEA, Part C.

The Service Coordinator ensures the parent knows his/her rights for the protection of their personally identifiable information and obtains consent, where appropriate, prior to disclosing this information.

2. Exceptions to the requirement of parental consent are:

A. the automatic referral requirements when a child is potentially eligible for preschool special education and a referral is made using the LEA Notification form;

B. those exceptions listed in FERPA, 34 C.F.R. §99.31, including but limited to:

(1) when a child moves and changes early intervention providers, the early intervention records may be sent from one early intervention provider to another without the parent's consent;

(2) disclosure to comply with a judicial order or lawfully issued subpoena;

(3) the disclosure is in connection with a health and safety emergency to appropriate authorities to protect the health or safety of the child or other individuals.

3. A consent to release (disclose) confidential information is only valid for 12 months.

4. When medical records or other "protected health information" is placed into a child's early intervention record, it is covered by the privacy protections of FERPA, and no longer covered by the Health Insurance Portability and Accountability Act (HIPAA). HIPAA expressly excludes those records that are part of a child's early intervention records in its definition of "protected health information." (45 C.F.R. §160.103)

5. SoonerStart protects the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.

6. SoonerStart ensures that all persons collecting or using personally identifiable information are trained and instructed on policies and procedures regarding the confidentiality of this information.

7. SoonerStart maintains for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally identifiable information.

*(Authority: 34 C.F.R. §303.401(d)(1) and -.414)*

### **Destruction of Records**

1. SoonerStart must inform parents when personally identifiable information collected, maintained, or used in the provision of early intervention services is no longer needed to provide services to the child under IDEA, Part C.

SoonerStart records are maintained at each local SoonerStart site office in an **active** or **inactive** file until the child's third birthday at which time they are transferred to a **closed** file. Once a child's file is transferred to a closed file, it is retained at the local SoonerStart site office for a period of one (1) year after the third birthday and is then transferred to the local county health department in the child's county of residence. These closed records are maintained in accordance with Records Disposition Schedule 2003-05N, Series 1-13A, but are eligible for destruction when they become seven (7) years old provided all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies and provided no legal actions are pending. If legal action is pending the record may be destroyed two (2) years

after of all legal remedies provided the record meets all stipulated retention requirements. All **active, inactive** and **closed** SoonerStart records are maintained in a confidential manner until destruction.

3. A permanent record of a child's name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and early intervention service providers, and exit data (including year and age upon exit) may be maintained without time limitation.

*(Authority: 34 C.F.R. §303.416)*

### **Parental Consent and Ability to Decline Services:**

1. The SoonerStart service coordinator ensures that parents are fully informed of their rights to consent to and decline services and ensures that parental consent is obtained before:

- A. administering screening procedures to determine whether a child is suspected of having a developmental delay or disability;
- B. all evaluations of a child and child and family assessments;
- C. early intervention services are provided to the child;
- D. public benefits or insurance or private insurance is used if such consent is required; and
- E. the disclosure of personally identifiable information.

2. If a parent does not give consent under 1.A or 1.B above, SoonerStart makes reasonable efforts to ensure that the parent:

- A. is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and
- B. understands that the child will not be able to receive the evaluation, assessment or early intervention services unless consent is given.

3. SoonerStart will not use due process procedures to challenge a parent's refusal to provide any consent.

4. The parents of a child referred to SoonerStart may:

- A. determine whether they, their child, or other family members will accept or decline any early intervention service in SoonerStart at any time, and
- B. decline a service after first accepting it, without jeopardizing other early intervention services.

*(Authority: 34 C.F.R. §420 )*

### **Prior Written Notice:**

1. Prior written notice (PWN) must be given to the parent of an eligible child a reasonable amount of time before SoonerStart proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. In general, the SoonerStart service coordinator must provide PWN to a parent after the team makes its decisions and before the implementation of those decisions. (After the decision, before the action.)

2. The notice must be in sufficient detail to inform the parent about:

- A. The action that is being proposed or refused;
- B. The reasons for taking the action;
- C. All procedural safeguards available under the federal regulations, including a description of mediation, how to file a complaint and a due process hearing, and the timelines under those procedures.

3. The notice must be understandable to the general public and provided in the native language of the parent, unless it is clearly not feasible to do so.

4. If the native language or other mode of communication of the parent is not a written language, the service coordinator shall take steps to ensure that:

- A. The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
- B. The parent understands the notice; and
- C. There is written evidence that the requirements of this paragraph have been met.

5. If the parent is visually or hearing impaired, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille, or oral communication).

6. Written information of family rights and procedural safeguards is to accompany every PWN sent. (Note that if the parent has previously received a copy of the information, has been informed verbally of their procedural safeguards, and requests not to receive another copy, the SoonerStart service coordinator does not have to give them another copy. The service coordinator must document this in writing in the child's file either by placing this information on the Prior Written Notice form or in the progress notes).

7. Prior Written Notice for Screening:

When there is a proposal to conduct a screening to determine if the child is suspected of having a developmental disability; a parent must receive PWN to determine whether or not to proceed with the screening. The *Consent for Screening and Prior Written Notice* form satisfies both the PWN and parental consent requirements. If, at any time throughout the screening process, the parent requests an evaluation, PWN must be provided as set out below. **Prior Written Notice must also be provided following the screening to provide the family with information regarding SoonerStart's recommendation.**

8. Prior Written Notice for Evaluation:

Prior written notice must be provided to a parent by the SoonerStart service coordinator before any evaluation to determine the initial or continuing eligibility for SoonerStart. *The Permission for Evaluation/Assessment and Prior Written Notice* form satisfies both the PWN and parental consent requirements. (PWN is not required for an assessment, such as the annual assessment).

9. Prior Written Notice for Re-Evaluation:

When SoonerStart proposes or refuses to conduct an evaluation to determine whether a child continues to qualify for early intervention services, PWN to the parent is required. *The Permission for Re-Evaluation and Prior Written Notice* form satisfies both the PWN and parental consent requirements.

**10. Prior Written Notice for Eligibility:**

The SoonerStart service coordinator must provide prior written notice to a parent after the multidisciplinary team determines that a child is eligible or ineligible, but before the team takes any further action. The PWN informs the parent of the reasons why the child was determined eligible or not eligible and the options if there is disagreement with this determination.

**11. Prior Written Notice for the Individualized Family Service Plan (IFSP)**

Prior written notice is provided to a parent by the SoonerStart service coordinator at the conclusion of the IFSP meeting (initial and continuing IFSP meetings) to confirm the decisions that were made during the meeting with the parent. The PWN is presented after the IFSP team decision of outcomes and services, but before services are provided.

**12. Prior Written Notice for Transition Planning Conference (TPC)**

Prior written notice is provided to a parent by the SoonerStart service coordinator at the conclusion of the Transition Planning Conference meeting to confirm the decisions that were made during the meeting with the Local Educational Agency (LEA) and the parent. If the family declines to participate in a TPC with the LEA or does not agree to a TPC with any potential receiving program, PWN is provided outlining the parent's decisions.

*(Authority: 20 U.S.C. §§1439(a)(6) and (7); 34 C.F.R. §§303.21 and 303.421)*

**Identification of the Parent and Use of a Surrogate Parent:**

**1. A parent is defined as:**

- A. a biological or adoptive parent of a child;
- B. a foster parent, unless Oklahoma law or regulations, prohibit a foster parent from acting as a parent;
- C. a guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the State if the child is a ward of the State);
- D. a person acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- E. a surrogate parent who has been appropriately appointed.

2. It is the responsibility of the SoonerStart Service Coordinator to determine who is considered the child's parent and has the authority to make early intervention service decisions for that child, including deciding whether to participate in SoonerStart, consenting to screening, evaluation, assessment, the provision of services, and consenting to share early intervention records.

3. SoonerStart policies and procedures protect the rights of children referred to SoonerStart when:

- A. no parent, as defined above, can be identified;
- B. after reasonable efforts, SoonerStart cannot locate a parent; or
- C. the child is a ward of the State

4. When more than one individual is qualified to act as a parent for the child, the biological or adoptive parent who attempts to act as the parent is presumed to be the parent for purposes of making early intervention decisions on behalf of the child, unless:

- A. that person does not have legal authority to make educational decisions for the child (such as when parental rights have been terminated); or
- B. there is a judicial order or decree specifying that some other individual to act as the parent for early intervention purposes.

5. If the biological or adoptive parent is not available, SoonerStart shall determine the parent in the following order of availability:

- A. a relative or stepparent with whom the child lives;
- B. a foster parent;
- C. a guardian appointed for the child, other than the State (or its employees/contractors, such as Child Protective Services);
- D. a surrogate parent who meets the requirements in this section.

6. SoonerStart is responsible for:

- A. determining whether a child needs a surrogate parent;
- B. assigning a surrogate parent to the child within 30 calendar days; and
- C. when the child is a ward of the State or placed in foster care, must consult with the agency (such as Child Protective Services) that has been assigned care of the child.

7. In the case of a child who is a ward of the State, the surrogate parent may be appointed by the judge overseeing the child's case provided that the requirements of a surrogate parent in this Section are met.

8. A surrogate parent is an individual who has been appropriately trained and is identified on the list of available persons to act as a surrogate parent. A surrogate parent:

- A. may not be an employee of any public agency or early intervention service provider that provides early intervention services, education, care, or other services to the child or any family member of the child; and
- B. may not have a personal or professional interest that conflicts with the interest of the child s/he represents;
- C. has knowledge and skills that ensure adequate representation of the child.

9. A person who is otherwise qualified to be a surrogate parent is not an employee of an agency solely because s/he is paid by the agency to serve as a surrogate parent.

10. A surrogate parent has the same rights as a parent in SoonerStart and may represent the child in all matters, including:

- A. The screening, evaluation, and assessment of the child;
- B. Development and implementation of the child's IFSP, including annual evaluations and periodic reviews;
- C. The ongoing provision of early intervention services to the child; and
- D. Any other rights established under IDEA, Part C, such as procedural safeguards.

11. In all instances when a person is identified to represent the child's interests, this information should be documented by the SoonerStart service coordinator in the child's file and all IFSP team members notified. With appropriate consent, the CPS Specialist should be notified as well.

*(Authority: 20 U.S.C. §1439(a)(5); 34 C.F.R. §§303.27; 422)*

### **Dispute Resolution:**

Every effort should be made to resolve family-provider disagreements using informal decision making. However, there may come a time during provision of early intervention services when a dispute or complaint arises. SoonerStart is responsible for ensuring that procedures for the resolution of disputes are in keeping with the child's best interests and family's priorities. Parents shall be informed of all their options for dispute resolution and provided assistance, as appropriate, in accessing these options.

1. SoonerStart ensures that families are informed of all their informal and formal dispute resolution options.
2. Informal dispute resolutions include working with the SoonerStart Service Coordinator, the local SoonerStart site Regional Early Intervention Coordinator (REIC) or contacting the SoonerStart Part C Coordinator at the Oklahoma State Department of Education to seek to resolve the concern without the use of formal procedures.
3. Formal dispute resolution options through SoonerStart include:
  - A. Requesting mediation for parties to resolve disputes involving any matter under IDEA, Part C;
  - B. Filing a complaint regarding any violation of IDEA, Part C; and
  - C. Requesting a due process hearing to resolve a complaint with respect to a particular child when SoonerStart proposes, or refuses, to initiate or change the identification, evaluation, or placement of their child, or the provision of early intervention services to the child and family.
4. SoonerStart service coordinators are responsible for ensuring that the parent understands these options and the procedures to exercise one or more of them. The Service Coordinator will help the parent access the various dispute resolution options through the Regional Early Intervention Coordinator (REIC) who contacts the Oklahoma State Department of Education.

The overall responsibility for administering Oklahoma’s dispute resolution system is conducted by the Oklahoma State Department of Education, Division of Special Education Services (OSDE-SES). OSDE-SES contracts with the Special Education Resolution Center (SERC) at Oklahoma State University to manage the required processes for dispute resolution. The three dispute resolution options available in Oklahoma are mediation, due process, and formal written complaints.

*(Authority: 20 U.S.C. §1439; 34 C.F.R. §§303.401-449)*

### **Mediation**

*Mediation* in early intervention is a process designed to assist parents and Part C agencies to resolve disputes or complaints about identification, evaluations, or placement of the child, or the provision of appropriate early intervention services to the child and the child’s family. A trained mediator works with both parties to guide them toward a mutually satisfactory solution in the best interest of the child.

1. Mediation is voluntary and may only be used when both parties to the dispute agree to do so.
2. A party may seek mediation to resolve disputes involving any matter under IDEA, Part C, including matters arising prior to the filing of a due process complaint.
3. Mediation cannot be used as a mandatory preliminary step prior to any other administrative or legal recourse.
4. Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights under IDEA, Part C.
5. Mediation is to be conducted by a qualified and impartial mediator who is trained in effective mediation techniques and knowledgeable in the law related to early intervention.
6. SoonerStart ensures that it selects mediators on a random, rotational, or other impartial basis.
7. The State bears the cost of the mediation process, including the costs of mediation.
8. Parties resolving a dispute through mediation must sign a legally binding agreement describing the resolution and:
  - A. states that all discussions that occurred during mediation are confidential and may not be used as evidence in any subsequent due process hearing procedure or civil proceeding in any Federal or State court; and
  - B. is signed by both the parent and a representative of SoonerStart who has the authority to bind SoonerStart.
9. A written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.

10. An individual who serves as a mediator:

- A. may not be an employee of the SoonerStart Program that is involved in the provision of early intervention services or other services to the child. However, a person who otherwise qualifies as a mediator is not an employee of SoonerStart solely because s/he is paid by the agency to serve as a mediator; and
- B. must not have a personal or professional interest that conflicts with the person's objectivity.

11. SoonerStart shall ensure that each session of the mediation session is scheduled in a timely manner and held in a location convenient to the parties involved in the dispute.

12. SoonerStart shall ensure that agreements reached by all parties through mediation will be recorded in a written mediation agreement.

*(Authority: 20 U.S.C. §1415(e); 34 C.F.R. §303.431)*

### **Formal Written Complaint**

*Formal Written Complaint* procedures govern the process for receiving and resolving any written complaint that any public agency or private service provider who receives Part C funds is violating a requirement or regulations of Part C of the IDEA.

1. A formal written complaint may be filed with the Oklahoma State Department of Education(OSDE) if it is believed that SoonerStart has violated a requirement or regulation of Part C of the IDEA. Upon receiving the formal written complaint, an investigation will be completed. A form designated for this purpose is available from the OSDE to assist parents in filing a Formal Written Complaint. A copy of the formal written complaint must be submitted to OSDE-SES (Attention: SoonerStart Early Intervention Program, 2500 Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599) and a copy must be sent to the local SoonerStart site serving the child.

2. A formal written complaint is a written signed statement by an individual or organization, including a formal written complaint filed by an individual or organization from another state. The formal written complaint must include:

- A. A statement that SoonerStart or a local SoonerStart Site has violated a requirement of Part C of the IDEA 2004;
- B. A statement of the facts on which the formal written complaint is based;
- C. The original signature and contact information for the complainant; and
- D. If alleging violations regarding a specific child:
  - (1) The name of the child and address of the residence of the child;
  - (2) The name of the SoonerStart site where the child and family are receiving services;
  - (3) In the case of a homeless child or youth, available contact information for the child and the name of the SoonerStart site where the child is receiving services.
  - (4) A description of the nature of the problem, including facts relating to the program; and

(5) A proposed resolution of the problem to the extent known and available to the party filing the formal written complaint at the time the complaint is filed.

3. The dispute in question must not have occurred more than one year before the date that the formal written complaint is received by SoonerStart unless a longer period is reasonable because:

A. The dispute in question continues for that child; or

B. The complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the formal written complaint is received by SoonerStart.

4. SoonerStart will investigate all Formal Written Complaints made on behalf of children that are similarly situated at a site level unless specified otherwise.

5. The OSDE appoints a complaint investigator who makes a recommendation regarding the validity of the complaint. After reviewing all the relevant information, the OSDE must determine whether the complaint is valid.

6. The investigator may conduct an on-site investigation if it determines that one is necessary. The complaint investigator must give the complainant the opportunity to submit additional information, in writing within the timeline permitted, about the allegations in the formal written complaint. The OSDE must submit a written report of the final decision to all parties involved, including findings of fact, conclusions, and reasons for final decision.

7. In resolving the formal written complaint in which the program is found as failing to consider appropriate services, SoonerStart, pursuant to its general supervisory authority under Part C of the IDEA, must address:

A. How to remediate the denial of the appropriate services including, the awarding of compensatory services, monetary reimbursement or other corrective action appropriate to the needs of the child; and

B. Appropriate future provision of services for all children similarly situated.

8. All formal written complaints must be investigated within 60 calendar days after the receipt of the formal written complaint by the OSDE. An extension of the 60 day time line may be granted only if exceptional circumstances exist with respect to a particular formal written complaint or if a mediation to resolve the formal written complaint is requested.

9. If a formal written complaint is received that is also the subject of a due process complaint hearing, or contains multiple issues, of which one or more are part of that hearing, SoonerStart must set aside any part of the formal written complaint that is being addressed in the due process complaint hearing, until the conclusion of the hearing. However, any issue in the formal written complaint that is not a part of the due process complaint hearing action must be resolved using the time line and procedures described in this section.

If an issue is raised in a formal written complaint filed under this section that has previously been decided in a due process complaint hearing involving the same parties:

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

A complaint alleging a failure to implement a due process complaint hearing decision must be resolved by the OSDE.

*(Authority: 34 C.F.R. §§303.432-434)*

### **Impartial Due Process Complaint Hearings**

*Due Process* procedures govern the process for resolving individual child complaints concerning identification, evaluation, or placement of the child and arising from the provision of appropriate early intervention services to the child and the child's family, under Part C of the Individuals with Disabilities Education Improvement Act 2004 (IDEA).

1. A parent or the SoonerStart program may initiate a hearing on any matters relating to the identification, evaluation or placement of a child or the provision of appropriate early intervention services to a child and family. When a hearing is initiated, SoonerStart must inform the parent of the availability of mediation.
2. A parent or SoonerStart must request an impartial hearing on their due process complaint hearing request within two years of the date the parent or program knew or should have known about the alleged action that forms the basis of the due process complaint hearing request, or if the state has an explicit time limitation for requesting such a due process complaint hearing under Part C of IDEA.
3. The timeline described above does not apply to a parent if the parent was prevented from filing a due process complaint hearing request due to:
  - A. Specific misrepresentations by the program that it had resolved the problem forming the basis of the due process complaint hearing; or
  - B. The program's withholding of information from the parent that was required under Part C of IDEA to be provided to the parent.
4. SoonerStart must inform the parent of any free or low-cost legal and other relevant services available in the area if (s)he requests the information, or if the parent or SoonerStart files a due process complaint.
5. SoonerStart must hold a resolution session within 15 days of receiving notice of the parents' due process complaint hearing request, and prior to the opportunity for a due process complaint hearing.
6. A party, parent or program, may not have a hearing on a due process complaint hearing request or engage in a resolution session until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this section.

7. A due process complaint hearing request may be submitted by a parent, program, or an attorney representing either party. A copy must be submitted to the other party involved and the Oklahoma State Department of Education, Special Education Services (Attention: Due Process Complaint Hearings, 2500 North Lincoln Boulevard, , Oklahoma City, Oklahoma 73105-4599) in writing, signed, and include:

- A. The name of the child;
- B. Date of birth of the child;
- C. The address of the residence of the child and of the parents;
- D. The name of the SoonerStart site providing services to the child
- E. In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the SoonerStart site providing early intervention services to the child;
- F. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem;
- G. A proposed resolution to the problem, to the extent known, and available to the party at the time; and
- H. The reason for challenging the identification, evaluation, or location of the services provided to the child and the family.

8. SoonerStart has developed a form to assist parents in filing a complaint and due process complaint notice. A copy of the form can be requested from the Service Coordinator or found on the State Department of Education website at ([www.sde.state.ok.us](http://www.sde.state.ok.us)).

9. The due process complaint notice must be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the due process complaint that the receiving party believes that the due process complaint does not meet the requirements stated above. Within 5 calendar days of receiving the notification the receiving party (the parent or SoonerStart) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify both parties in writing immediately.

10. A party may amend its due process complaint hearing request only if:

- A. The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint hearing request through a resolution session; or
- B. The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time no later than five days before the due process complaint hearing begins.

11. The applicable timeline for a due process complaint hearing under Part C must re-start at the time the party files an amended notice, including the timeline for a resolution session.

12. If SoonerStart has not sent a prior written notice under Part C of IDEA to the parent regarding the subject matter contained in the parent's due process complaint hearing request, SoonerStart must, within 10 days of receiving the due process complaint hearing request, send to the parent a response that includes:

- A. An explanation of why the SoonerStart site proposed or refused to take the action raised in the due process complaint hearing request;
- B. A description of other options that the SoonerStart site considered and the reasons why those options were rejected;
- C. A description of each evaluation procedure, assessment, record, or report the SoonerStart site used as the basis for the proposed or refused action; and
- D. A description of the other factors that are relevant to the SoonerStart site's proposed or refused action.

13. A response by SoonerStart under this section must not be construed to preclude the program from asserting that the parent's due process complaint hearing request was insufficient, where appropriate.

14. Except as provided above, the party receiving a due process complaint hearing request must, within 10 days of receiving the due process complaint hearing request, send to the other party a response that specifically addresses the issues raised in the due process complaint hearing request.

15. Subject to this section, a hearing officer must make a decision on substantive grounds based on a determination of whether the child and the child's family received appropriate early intervention services.

16. In matters alleging a procedural violation, a hearing officer may find that a child or a child's family did not receive appropriate early intervention services only if the procedural inadequacies:

- A. Impeded the child and family's right to appropriate early intervention services;
- B. Significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of appropriate early intervention service to the child and the child's family;
- C. Caused a deprivation of early intervention benefit.

### **Resolution Session for Due Process Complaint Hearing Request**

1. SoonerStart must hold a resolution session within 15 days of receiving notice of the parents' due process complaint hearing request, and prior to the opportunity for a due process complaint hearing. The program must convene a meeting with the parents and the relevant member or members of the SoonerStart site who have specific knowledge of the facts identified in the due process complaint hearing request that:

- A. Includes a representative of SoonerStart who has decision-making authority on behalf of the program; and
- B. May not include an attorney of SoonerStart unless the parent is accompanied by an attorney.

2. The purpose of the resolution session is for the parents of the child to discuss their due process complaint hearing request, and the facts that form its basis, so that the program has the opportunity to resolve the dispute.

3. The resolution session described above need not be held if:

- A. The parents and the program agree in writing to waive the meeting; or

B. The parents and the program agree to use the mediation process described in this document.

4. If SoonerStart has not resolved the due process complaint hearing issues to the satisfaction of the parents within 30 calendar days of the receipt of the due process complaint hearing request, the due process complaint hearing must occur and all applicable timelines for a due process complaint hearing must commence.

5. Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of a parent filing a due process complaint hearing request to participate in the resolution session will delay the timelines for the resolution process and due process complaint hearing until the parent agrees to participate in the resolution session.

6. If after making reasonable efforts and documenting such efforts, SoonerStart is not able to obtain parent participation in the resolution meeting, SoonerStart may, at the end of the 30 calendar-day resolution period, request that a hearing officer dismiss the due process complaint hearing request. Documentation of such effort must include a record of SoonerStart's attempts to arrange a mutually agreed upon time and place, such as:

- A. Detailed records of telephone calls made or attempted and the results of those calls;
- B. Copies of correspondence sent to the parent and any responses received; and
- C. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

7. If SoonerStart fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint hearing request or fails to participate in the resolution session, you may ask a hearing officer that the 45 calendar-day due process complaint hearing timeline begin.

#### **Adjustments to the 30 Calendar-Day Resolution Period**

1. If the parent and SoonerStart agree in writing to waive the resolution meeting, the 45 calendar day timeline for the due process complaint hearing starts the next day.

2. After the start of mediation or the resolution session and before the end of the 30 calendar-day resolution period, if the parent and SoonerStart agree in writing that no agreement is possible, then the 45 calendar-day timeline for the due process complaint hearing starts the next day.

3. If the parent and SoonerStart program agree to use the mediation process at the end of 30 calendar-day resolution session, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either the parent or SoonerStart withdraws from the mediation process, the 45 calendar day timeline for the due process complaint hearing starts the next day.

#### **Written Settlement Agreement**

If a resolution to the dispute is reached at the meeting described above, the parent and SoonerStart must execute a legally binding agreement that is:

- A. Signed by both the parent and a representative of SoonerStart who has the authority to bind the program; and
- B. Enforceable in any state court of competent jurisdiction or in a district court of the United States.

### **Agreement Review Period**

1. If the parent and SoonerStart enter into an agreement as a result of a resolution session, either party may void the agreement within 3 business days of the time that both the parent and SoonerStart signed the agreement.

2. A successful resolution session ends the due process complaint hearing procedure. If the resolution session ends without agreement, a hearing officer is appointed and a hearing is scheduled.

### **Impartial Hearing Officer**

1. At a minimum, a hearing officer:

A. Must not be:

- 1. An employee of any agency or other entity involved in the provision of early intervention services or care of the child; or
- 2. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

B. Must possess knowledge of, and the ability to understand, the provisions of IDEA, federal and Oklahoma State law and regulations pertaining to IDEA, and legal interpretations of IDEA by federal and state courts;

C. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

D. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

2. A person who otherwise qualifies to conduct a hearing under this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. The OSDE must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

### **Subject Matter of Due Process Complaint Hearing**

The party, parent or SoonerStart, requesting the due process complaint hearing may not raise issues at the due process complaint hearing that were not raised in the due process complaint unless the other party agrees otherwise.

### **Hearing Rights**

Any party to a hearing has the right to:

- A. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- B. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- C. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;
- D. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
- E. Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

### **Parental Rights at Hearings**

The parent has the right to:

- A. Have the child who is the subject of the hearing present;
- B. Open the hearing to the public; and
- C. Have the record of the hearing, the findings of fact and decisions provided at no cost.

### **Additional Disclosure of Information**

1. At least 5 business days prior to a hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
2. A hearing officer may bar any party that fails to comply with the disclosure requirements of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

### **Due Process Complaint Hearing Decisions**

1. Nothing in this section must be construed to preclude a parent from filing a separate due process complaint hearing request on an issue separate from a due process complaint hearing request already filed.
2. The record of the hearing and the findings of fact and decision must be provided to all parties at no cost.
3. SoonerStart, after deleting any personally identifiable information, must transmit the findings and decisions to the Interagency Coordinating Council (ICC), and make those findings and decisions available to the public upon request.
4. A decision made in a hearing is final, except that any party involved in the hearing may appeal the decision through requesting an appeal review through the OSDE.
5. SoonerStart must ensure that not later than 45 days after the expiration of the 30 day period regarding a resolution session:
  - A. A final decision is reached in the hearing; and
  - B. A copy of the decision is mailed to each of the parties.

### **Extension of Time**

A hearing officer may grant specific extensions of time beyond the periods described above if the parent or SoonerStart makes a request for a specific extension of the timeline. Each hearing and review involving oral arguments must be conducted at a time and place that is reasonably convenient to both parties.

### **Finality of Review Decision**

The decision made by the hearing officer is final unless you or SoonerStart brings a civil action, as described below.

*(Authority: 34 C.F.R. §§303.430; 435)*

### **Civil Action:**

1. Any party aggrieved by the findings or decisions made through the hearing review process has the right to bring a civil action with respect to the complaint presented in the hearing. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount of controversy. The party, parent or program, bringing the action must have 90 calendar days from the date of the decision of the appeal officer to file a civil action.

2. In any action brought under this section, the court:

- A. Must receive the records of the administrative proceedings;
- B. Must hear additional evidence at the request of a party; and
- C. Bases its decision on the preponderance of the evidence, must grant the relief that the court determines to be appropriate.

3. The district courts of the United States have jurisdiction of actions brought under Part C of the IDEA without regard to the amount in dispute. Nothing in this part restricts or limits the rights, procedures, and remedies available under the US Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the IDEA, the due process complaint hearing procedures must be exhausted to the same extent as would be required had the action been brought under Section 615 of the IDEA.

*(Authority: 34 C.F.R. §303.438)*

### **System of Payments:**

#### **System of Payments and Fees (34 CFR §303.521)**

If a State elects to adopt a system of payments, policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family's public insurance or benefits or private insurance).

A parent who wishes to contest the imposition of a fee, or the State's determination of the parent's ability to pay, may do one of the following:

- (i) Participate in mediation.
- (ii) Request a due process hearing.
- (iii) File a State complaint.
- (iv) Use any other procedure established by the State for speedy resolution of financial claims, provided that such use does not delay or deny the parent's procedural rights.

Functions not subject to fees include:

- (1) Implementing child find requirements
- (2) Evaluation and assessment
- (3) Service coordination services
- (4) development, review, and evaluation of IFSPs

The Individuals with Disabilities Education Act (IDEA) requires that Part C programs be the payor of last resort and requires that Part C funds only be used for Early Intervention Services that an eligible child needs but is not currently entitled to under any other Federal, state, local, or private sources.

The SoonerStart program does not collect co-payments, sliding scale fees or private insurance reimbursement for IDEA Part C services. The SoonerStart program is supported by the following funding sources:

1. Medicaid
2. State general revenue
3. IDEA Federal funds

SoonerStart does not require a parent to enroll in a public benefits (Medicaid) program as a condition to participate in early intervention services. If the child is currently enrolled in the Oklahoma Medicaid program (SoonerCare), SoonerStart bills Medicaid for Medicaid compensable services. Parental consent is obtained when the parent enrolls in the Oklahoma Medicaid program and SoonerStart will provide prior written notice to the parent before billing Medicaid.

*(Authority: 34 C.F.R. §303.520 and §303.521)*

Additional information is found in the [SoonerStart Early Intervention Policies 2012](#) or the online version <http://ok.gov/sde/sites/ok.gov.sde/files/SpecEd-DraftSSPolicies.pdf>.