

EarlySteps Practice Manual: 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 Improvement Act (IDEA). These rights and safeguards must be vigorously enforced throughout the early intervention process.

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Louisiana’s State-Identified Measureable Result for Infants and Toddlers with Disabilities and Their Families:

The EarlySteps System will improve child outcomes through supports that are focused on family Concerns, Priorities and Resources and provided through a team-based approach.

	Revisions/Updates:
<p>Chapter 2 Parents Rights and Family Rights Handbook.</p>	<ul style="list-style-type: none"> --Citations for laws, regulations and policies provided throughout. --Regulations : Procedural Safeguards Language --definition of procedural safeguards --added prior notice and consent for developmental screening --Complaint table with type of complaints and sample resolutions --Due Process Contact Info to Division of Administrative Law --added system of payments policy updates for FCP and use of Medicaid --added summary section of all rights at end of chapter --added FERPA changes to allow release of information without parent consent under certain circumstances --included references to the DEC Recommended Practices which guide EarlySteps work with children and families by highlighting practices that have been shown to result in better outcomes for young children with disabilities, their families and the personnel who serve them. --added “Plain Language” points to interpret some of the language --General Supervision Requirements- Performance Expectations

The Rights of a Family in EarlySteps – Louisiana’s IDEA, Part C System

Through the Individuals with Disabilities Education Improvement Act (IDEA), families are given guarantees and rights designed to protect their interests and those of their child. These rights 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 Individualized Family Services Plan (IFSP)” (Hurth and Goff, 2002).

The purpose of this chapter is to outline the safeguards that support this role for families. In addition to this chapter, the Family Rights Handbook is the document provided to families which explains their rights in the IDEA, Part C system.

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

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, September 28, 2011, 34 CFR Part 610-62, and FERPA 34 CFR Part 99

Louisiana State Law: Act 417 of the 2013 Legislature

Louisiana Policy: EarlySteps Policy, Revised 2014

Louisiana Medicaid Policy: Medicaid Eligibility Manual

EarlySteps Practice Manual: Chapter 2, Revised June, 2022

OCDD Complaint Policy and Process

The language in these laws and policies is formal and “official.” Plain language points are added throughout this chapter for clarification of terminology and look like this:

➤ **Plain Language**

References to the DEC Recommended Practices which illustrate how EarlySteps implements these evidence-based practices are shown throughout this chapter and look like this:



What are the Division of Early Childhood Recommended Practices (DECRRPs)? To best support families during their child’s time in early intervention, EarlySteps uses the DECRRPs as its *evidence-based practices*. These practices are a guide to define the best ways to improve the learning outcomes and promote development of young children. Supporting families whose children are in early intervention is one of the 7 topic areas in the DECRRPs and a major focus for EarlySteps. The practices include resources and materials just for families. How EarlySteps uses the DECRRPs is referenced throughout this chapter and throughout each chapter of EarlySteps Practice Manual.

Each state determines the agency responsible for implementing the IDEA, Part C program in the state. In Louisiana, the lead agency for EarlySteps is the Louisiana Department of Health, Office for Citizens with Developmental Disabilities (see Practice Manual Chapter 1 for more information). The lead agency is responsible for ensuring implementation of the Part C requirements by each enrolled agency, individual service provider, or contractor, including the “procedural safeguards” These *procedural safeguards* are a required component of the early intervention system and are designed to protect the rights of 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; and
- Procedures to resolve disputes are in place.

Part C procedural safeguards apply at all steps in the process from referral, intake, eligibility determination, IFSP development and implementation, to transition out of and exit from EarlySteps. 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) for children who are eligible for Medicaid. IDEA, 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 health care, acute illness care, hospitalizations, etc. However, Medicaid rights do apply if a child receives services through those programs.

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;
- Once the child is determined eligible to receive early intervention services and supports, an Individualized Family Service Plan (IFSP) is developed within 45 days of referral.
- Early intervention services based on the child’s IFSP are provided in the family’s natural environment and begin within 30 days of the parent’s consent on the IFSP.
- Right to decline evaluation and services;
- Freedom of Choice in provider selection;
- Permission to use a child’s Medicaid as payment for services or notice of family cost share for early intervention services.

An explanation of each of these rights and safeguards is outlined in this Chapter. In addition, families also receive a copy of their rights in the *Family Rights Handbook* each time consent is required. Definitions and descriptions of how the procedural safeguards are implemented are outlined in this section.

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 in your child’s program. 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; what your needs are; 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 Family Service Coordinator (FSC) and providers when there is a change in address or phone numbers.
- Accept phone calls from the FSC for the monthly call 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 by sharing information and participating in quarterly team meetings.
- Notify providers if unable to keep scheduled appointment in a timely manner to allow for time to reschedule the appointment.
- Follow provider team suggestions for making the most of each visit and for ways to use activities throughout your child's daily routines and activities.
- Reviewing your *Family Rights Handbook* with your intake coordinator or FSC each time it is discussed with you.

Some suggestions for making the most of each contact with your team:

- Participate in the IFSP process—work with service providers to plan and carry out the goals you selected for your child and share your knowledge and observations with them. Let the team know what your family's concerns, priorities and resources are regarding your child's developmental needs.
- Update your concerns and priorities at each contact with your team, things change quickly for your child and family.
- 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 early intervention team. Be upfront with your questions or reporting when something is not going well.
- Be on time for scheduled appointments and notify your team 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 other early intervention team members.



DEC Recommended Practice Leadership 3:

It is the mission of EarlySteps to: “develop and implement policies, structures, and practices that promote shared decision-making with families and early interventionists.”

Definitions of Procedural Safeguard Terms

Procedural Safeguards

Procedural safeguards are legal protections available to children and families to protect their rights in dealing with agencies and early interventionists. EarlySteps will discuss these protections with families throughout their time in early intervention and give copies of the rights each time a parent's signature for consent is required. It may seem like repetition, but it is meant to show the importance of family rights when decisions are made for a child.

This section defines the terms used in these safeguards.

Consent means that ---

- A parent understands and agrees in writing to the carrying out of an activity for which the consent is sought. For example, consent will be requested when records are requested or released or when services are started, stopped, or changed.

- 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;
 - The parent understands that the granting of consent is voluntary on their part and may be revoked at any time.
 - If a parent revokes consent, it is not retroactive. Changes will occur with the date the parent changes the consent.
 - The parent understands that they may accept or decline an early intervention service without jeopardizing other early intervention services.
 - The parent can refuse specific services, but must maintain support coordination as a service if continuing in EarlySteps.
- **Plain Language:** Parents have to give permission for most activities that EarlySteps provides. Permission is given through a signature.

Native language means the language or mode of communication normally used by the parent of an eligible child. For evaluations and assessments, the language normally used by the child, is used if determined developmentally appropriate for the child, by the qualified personnel conducting the evaluation or assessment. 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).

- **Plain Language:** EarlySteps must communicate with you in the language that you are most comfortable with.

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 biological or adoptive parent, guardian, foster parent, a person who is legally responsible for a child's welfare, 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.

Either parent may act in the role of the parent. EarlySteps assumes that either parent is authorized to act on behalf of the child unless one parent does not have the legal authority to make educational or early intervention services decisions for the child. If the parents are separated, divorced and/or have a custodial arrangement and both meet the definition of a parent, the "parent" is the person through judicial decree or order identified as the "parent" to make early intervention and educational decisions on behalf of the child. If a judicial decree or order identifies a specific person to act as the "parent" or to make educational/early intervention service decisions on behalf of a child, then that person is determined to be the "parent" for that child.

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 a parent cannot be located.

Parent’s Rights in Early Intervention:

Prior, Written Notice of Action

Requirements regarding *prior, written notice* can be found in the IDEA, Part C regulations in 303.404 and 303.420-421.

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:

- Developmental screening, during which the family may request an evaluation at any time
- Identification, evaluation and assessment
- Determination that a child is eligible/not eligible for EarlySteps
- Placement (location of service)
- Provision of appropriate early intervention services including changes in services
- Public benefits or insurance (Medicaid) or private insurance is used, if consent is required. If parents do not provide consent for the use of a child’s Medicaid, EarlySteps will make available those services on the IFSP for which the parent has provided consent. The parent will have no costs associated with the use of a child’s Medicaid to pay for early intervention services. Additional information about family cost participation (FCP) follows in the System of Payments section below. Chapter 15 of the Practice Manual also addresses FCP.
- Disclosure of personally identifiable information and rights regarding confidential information

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; and
- Written in language understandable to the general public.

- **Plain Language:** EarlySteps must tell parents ahead of time and in writing before anything can happen—a test, services, a meeting, an IFSP change—anything.

Reasonable time frame 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, including screening;
- IFSP development, including team meetings;
- Changing or revising early intervention services;
- Changing the location of early intervention services; and
- 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 provided in the parents’ 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 provided before a change is made 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.

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

Consent

Requirements regarding consent can be found in the IDEA, Part C regulations in 303.414 and 303.420.

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

- Conducting developmental screening;
- Conducting the evaluation and assessment of a child;
- Initiating or changing the provision of early intervention services;
- Releasing information which identifies the child to others; or
- Accessing public benefits or private insurance and notice of potential costs for 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.
- Understands that there may be costs assessed for some services, if consent is not given to use a child's Medicaid and/or that some services are available at no cost

Parent 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 Department of Children and Family Services is required. The phone number to call is 1-855-4LAKIDS or 1-855-452-5437.

Confidentiality

Confidentiality refers to personally identifiable data, information and records which must be protected for privacy. There are two main Federal laws that determine how this is handled. The Family Educational Rights and Privacy Act (FERPA) with regulations in 34 CFR 99 and the Health Insurance Portability and Accountability Act (HIPAA) with regulations in 45 CFR Part 160. The confidentiality provisions of IDEA, Part C are found in 34 CFR 303.401-.402. EarlySteps must make sure that a family's right to confidentiality is protected.

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 Louisiana Department of Education and the local education agency for transition purposes prior to a child reaching the 3rd birthday. EarlySteps uses the **Consent to Release and Share Information** form for the purpose of obtaining a family's consent to release personally-identifiable information.

"Participating agencies" is the term used for any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the Part C requirements. These agencies include the Louisiana Department of Health (LDH), early interventionists, etc. It does not include referral agencies or private agencies such as private insurance companies that are solely funding agencies.

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 a parent. 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;
- The destruction of the information at a parent's request; and
- The possible maintenance of permanent records: name, address, phone number, etc.

There are also exceptions to the confidentiality requirements:

- Records may be released without parent consent to a caseworker or other representative of a State or local child protection agency authorized to access a child's record when they are legally responsible for the care and protection of the child.

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 Department of Children and Family Services prior to any release of information from the child's file. FERPA was amended in 2014 to allow exceptions in cases regarding the care and protection of a child related to the early intervention needs of a child in foster care placement which allows the release of early intervention records without parent consent for children in foster care so that the services are not interrupted. The revision is referred to as the Uninterrupted Scholars Act.

- **Plain Language:** Information and communication about a child in EarlySteps is confidential and cannot be shared with anyone without a parent's consent, with a few exceptions.

Opportunity to Examine Records

The IDEA, Part C regulations related to family rights regarding records are found in 34 CFR 303.405-410.

The parents of eligible children must be given the opportunity to inspect and review any records relating to their child such as 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. The records must be provided without unnecessary delay and before any meeting regarding an IFSP or a dispute and in no case more than 10 days after the request has been made.

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 System Point of Entry Office (SPOE) in the region in which the child is receiving EarlySteps services. Parents may be charged a reasonable fee to cover the cost of photocopying. The fee does not prevent the parents from exercising their right to inspect and review the records. The participating agency must provide a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting and at no cost. The agency may not charge a fee to search for or retrieve information from the child's record. Parents may also give the right to a representative of the parent to inspect and review the record.

A participating agency may presume that the parent has authority to inspect and review records relating to their child unless the agency has been provided documentation that the parent does not have the authority under applicable State laws governing custody, foster care, guardianship, separation, and divorce.

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. Access to the record by a parent or their authorized representative is not required to be documented. 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 own 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(s) 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 use dispute resolution procedures to resolve the concern.

If, as a result of such a hearing/review, the information is found to be inaccurate, misleading, or violates the privacy or other rights of the child or parent, 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 or parent, the public agency will inform the parent of the decision and 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;
- (2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

- **Plain Language:** Parents have the right to review their child's record, request copies of the record, and ask that information be amended in the record.

Dispute Resolution: Complaints, Mediation, and Due Process Hearings

The Department of Health/OCDD maintains procedures for receiving, investigating, and resolving complaints relating to violations of IDEA, Part C requirements. This process is administered through EarlySteps under the LDH, Office for Citizens with Developmental Disabilities (OCDD). LDH 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 terms in its dispute resolution process:

Terms

Dispute Resolution: refers to the process states must have to respond to complaints in a timely manner.

Complaint: refers to a concern, dissatisfaction, or dispute expressed through written or verbal communication regarding the care, supports/services, action or inaction of staff, agency requirement or other circumstance affecting the quality of care or quality of life of a child/family including allegations of rights violations. The person making the complaint is referred to as the *complainant*. Requirements for managing complaints can be found in Part C regulations 34 CFR 303.432-433 and in OCDD's Customer Complaint Policy # 602.

Mediation: refers to a specific process used to resolve complaints. Mediation is an attempt to bring a 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 LDH mediation may also be called an Administrative Conference. Requirements for managing mediation can be found in Part C regulation 303.431.

Due Process Hearing: refers to a specific process used to resolve complaints. Due Process is a formal, administrative hearing where an impartial individual presides. This hearing provides the family 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. Requirements for managing due process hearings can be found in Part C regulation 34 CFR 303.440.

- **Plain Language:** EarlySteps has a process to handle any complaint about the early intervention program for a child. If you have a complaint, talk to the family support coordinator or the EarlySteps regional coordinator in your area.

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 IDEA, Part C or the regulations relating to the identification, evaluation or placement of the child;
- The facts describing the alleged complaint;
- 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;
- A proposed resolution to the problem;
- The complaint must be made to the appropriate OCDD human services district/authority (also called local governing entity or LGE), or regional coordinator, and the complainant will have the opportunity to submit additional information either orally or in writing.
- The parent will be required to sign the complaint, once written, and a copy will be forwarded to subject of the complaint.

When the complaint is received by EarlySteps, the following steps will take place:

- The complaint it will be assigned to a regional coordinator, quality assurance specialist, or to central office staff to investigate.
- Information will be collected about the incident or action and a decision will be made regarding the resolution of the problem.
- The complainant will receive a letter that the complaint has been received and is being investigated.
- The complainant is offered an opportunity to submit additional information either orally or in writing, including a potential resolution to the complaint;
- The person against whom the complaint is being made will have an opportunity to respond to the complaint including offering a potential resolution to the complaint
- Information will be collected by the investigator and reviewed with the EarlySteps central office.
- The complainant will be offered an opportunity to participate in mediation.
- A determination will be made as to the status of the violation and a decision will be made.
- Once the complaint is resolved, the complainant will receive a letter outlining the activities taken and the final status of the complaint.
- The agency/individual against whom the complaint is made will also receive a findings letter and corrective action may be implemented.

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.

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. The final decision letter will be mailed to the complainant. The decision letter will include the findings, conclusions and the rationale for the decision.

Timelines

In resolving a complaint in which it finds a failure to provide appropriate services, LDH **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, LDH 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. An extension of the timeline may be granted if exceptional circumstances exist and the parent, individual, lead agency, and/or provider involved agree to the timeline extension. Timeline extensions will also be granted if mediation is used and all parties agree to extend the time to engage in mediation.

Anyone may make a complaint by calling the Local Governing Entity/Human Service District/Authority in their region. Contact information can be found at <http://www.dhh.state.la.us/offices/page.asp?77&detail=3259> on the OCDD website. Additionally, the individual may call the EarlySteps Regional Coordinator whose contact information is located on the EarlySteps website. This information can be found by calling the toll free number for OCDD at 1-866-783-5553.

The table below shows the typical types of complaints received by EarlySteps and the types of information collected to investigate and resolve the complaint and typical results:

Type of Complaint	Information Collected	Information Source	Responsible Party	Typical Results of a Complaint
Explanation of Benefits (EOB) —IFSP requirements not met for example, services not provided as billed.	Progress/Contact Notes Claims/Payment records	Early Interventionist	Regional Coordinator Central Office	New provider selected Payments recouped Corrective Action developed Provider sanctioned/disenrolled Credit issued to family
Other Service Related Complaints —for example, provider is always late without notice to family	Progress/Contact Notes Eligibility Documentation IFSP IFSP Revisions Related Data	Early Interventionist Eligibility Evaluator SPOE FSC	Regional/Central Office	New provider selected Payments recouped Corrective Action developed Provider sanctioned/disenrolled Credit Issued
Complaints regarding disputes between providers —for example, provider incorrectly shares information about another provider	Progress Notes Eligibility Documentation IFSP IFSP Revisions Related Data Provider summary of action/behavior	Early Interventionists Family Community member	Regional/Central Office	New provider selected Payments recouped Corrective Action developed Provider sanctioned/disenrolled Credit Issued
Complaints regarding eligibility determination —family disagrees with team decision	Eligibility evaluation Other intake/assessment information Progress notices	IFSP team Information collected	Regional/Central Office	-Review of information results in agreement -Family selects new evaluator and new evaluation conducted -additional data collected and informed clinical opinion used to determine eligibility

Mediation and Due Process

Mediation and Due Process are two additional methods that are used when resolving complaints about the early intervention services or the State’s inability to meet IDEA, Part C requirements or not adequately supervise the program.

What is Mediation? Mediation is a process in which an impartial person helps parties in conflict resolve a dispute through settlement or compromise that is satisfactory to all parties involved. Individuals trained as mediators facilitate this process. Mediation can be made available to resolve any dispute. In LDH, 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. In LDH, a due process hearing is also called an *appeal or fair hearing*.

Requesting Mediation

Upon receipt of a request for a due process hearing, the parents are also offered the opportunity to mediate their dispute through the mediation process. 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, complaint resolution, or deny or delay any other rights afforded under Part C.

A list of the trained mediators is maintained by the Division of Administrative Law

- Mediation must be scheduled within five (5) days of the selection assignment 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, at their expense.
- 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.
- If a hearing officer was assigned for a due process hearing and mediation is requested then another hearing officer will conduct the mediation.

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.

The LDH mediation process is handled through the Louisiana Division of Administrative Law which 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 LDH, this process may be called an Agency Conference. An Agency Conference may be requested by calling the EarlySteps Program Manager at 225.342.0095 or 1.866.783.5553.

Due Process Hearing/Appeal

Due Process is an administrative hearing where an impartial individual presides to hear a complaint and decides how to resolve it. It may also be referred to as an Appeal or a Fair Hearing. The appeal is managed through the Louisiana Division of Administrative Law and heard by a hearing officer called an Administrative Law Judge. 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 opposing 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 will investigate the complaint and give the complainant an opportunity to submit additional information, either orally or in writing, regarding the complaint. The hearing officer will also allow the individual against whom the complaint is made, an opportunity to respond. Both parties may recommend a resolution. The hearing officer will review all the information, review the documentation and issue a written decision, including the reasons for the final decision.

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. LDH 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 1 year 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 have 3 ways to initiate a due process hearing.

1. A request mailed to: EarlySteps Due Process Request
Division of Administrative Law, Health Section
P. O. Box 4189
Baton Rouge, Louisiana 70821-4189

2. You can also file appeals by telephone: Call 225.342.5800
3. Online: Families can now appeal LDH decisions online at the Division of Administrative Law (DAL) website. The DAL Health and Hospitals Section page includes an Appeal Request Form that can be completed and submitted electronically. Instructions are given below on how to use it. Please send this information to all interested parties. DAL suggests that these instructions be included in the appeal rights section of LDH's notice of decision.

To access the electronic Appeal Request Form:

1. Go to the LDH Section of the DAL Website: <http://www.adminlaw.state.la.us/HH.htm>
2. Click on the Appeal Request Form link that says: **Click Here to fill out the Appeal Request Form**.
3. Complete the Appeal Request Form.
4. After completion,
 - A. attach the notice you are appealing as follows: (i) scan it into your computer or other electronic device, (ii) click "browse" at the bottom right of the webpage, (iii) select the notice, and (iv) click **Send Form** at the bottom left of the webpage;
 - OR**
 - B. if you do not have the notice you are appealing or you cannot scan the notice, then click **Send Form** at the bottom left of the webpage.

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 or the online form may be used. Upon receipt of the due process request, the EarlySteps Program Manager reviews the request for due process and will send notification of receipt to the party and forward to the Division of Administrative Law. Within thirty (30) days of receipt of this statement, a hearing will be held to review the concerns and a decision reached. This same process is used when families feel that a denial of a child's Medicaid services or a decision regarding Medicaid services was incorrect.

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 timeline from the hearing officer (if the desire is to proceed with the mediation.)

Appointment of an Impartial Person

A hearing officer assigned by the Division of Administrative Law will conduct the hearing. This person must have knowledge of the provisions of IDEA 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

LDH ensures that the parents of children eligible under this part are afforded the rights in this section in any administrative proceedings carried out under IDEA, Part C regulations: 34 CFR §303.430. Any parent involved in an administrative proceeding has the right to:

- Have the hearing held at a time and place that is reasonably convenient;
- 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 at no cost to the parent;
- Have the hearing officer listen to the presentation from the parties involved, examine the relevant information, and reach a timely decision; and
- Obtain written findings of fact and decisions at no cost to the parent.

Due Process Resolution

LDH, 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 LDH website, thus making the findings available to the public. EarlySteps also reports dispute resolution information as part of its annual data submission to the Office for Special Education Services with the US Department of Education.

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 involving a complaint is pending (unless the public agency and parents of a child otherwise agree), the eligible child must continue to receive the appropriate early intervention services currently being provided. If the complaint involves an application for initial services, 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.

- **Plain Language:** If anyone has a problem with an early intervention requirement not being met, there is a process in place for it to be resolved. Complaints help EarlySteps identify and fix problems that families may experience.

Every year, EarlySteps reports to Office for Special Education Programs (OSEP) on its success in resolving complaints and any due process hearings and/or mediation sessions. Since 2007, the state has had 100% compliance with meeting the complaint requirements.

Federal Performance Indicator 10: Percentage of mediations held that resulted in mediation agreements. Target: 100%

Child's Right to a Surrogate Parent

Requirements for appointing a surrogate parent to represent the needs of a child are found in IDEA, Part C regulations: 34 CFR 303.422.

A Surrogate Parent is appointed by LDH to represent a child 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 following consultation with the Department of Children and Family Services (DCFS), it is determined that LDH will assign the surrogate parent.

Appointing a Surrogate Parent

An EarlySteps Surrogate Parent is authorized to act as the child's parent in order to make early intervention or developmental decisions 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 eligibility determination and activities related to 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.

The individual selected to serve as a Surrogate Parent:

- May not be an employee of the lead agency or any other participating agency that provides early intervention services and
- Must not have a personal or professional interest that conflicts with the interest of the child.
- Is qualified to be a surrogate parent must not be an employee of an agency where the sole responsibility is to serve as surrogate parent and be compensated for this role.
- Has knowledge and skills that ensure adequate representation of the child.
- Has the same rights as a parent for all responsibilities in Part C.

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 an IDEA, 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.

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

Children under the Care and Custody of the State

The EarlySteps Surrogate Parent and any state agency caseworker the child may have, such as DCFS or OCDD, must coordinate services and supports for the overall benefit of the child. In this case, the surrogate parent, instead of being appointed by the lead agency, may be appointed by the judge overseeing the case or as determined by DCFS policy. The individual selected may not be an employee of the lead agency or any other participating agency that provides early intervention services and who has no personal or professional interest that conflicts with the interest of the child.

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.

Timelines

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 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 may not be needed when a child has a foster parent.**

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

The SPOE 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 LDH a **Surrogate Parent Determination Form** for each child believed to be in need of an EarlySteps Surrogate Parent.

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 DCFS caseworker responsibility under the laws of the state for the obligations of the department as a custodial parent.

- **Plain Language:** EarlySteps will appoint someone to act in the role of a parent for decision-making if a parent cannot act in that role.

Other Procedural Safeguards:

➤ Accept or Decline Services

Requirements regarding this safeguard are found in IDEA, Part C regulations: 34 CFR 303.420.

Parents of eligible children have the right to determine whether they, their child, or other family members will accept or decline the evaluation and assessment or 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 IDEA, Part C system. If a parent does not give consent for an activity, the Lead Agency must make reasonable efforts to ensure that the parent is fully aware of the nature of the activity and understands that the child will not be able to receive the service or activity unless consent is given.

- **Plain Language:** Parents have the right to “pick and choose” what services they want from EarlySteps when service decisions are reached by the team members.

➤ Refuse to Complete/Sign Documents

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

➤ Freedom of Choice

Louisiana assures that families have freedom of choice in the selection of an available service coordination agency and/or other early intervention service providers and the right to change providers or service coordinators *at any time*.

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. Families will review the matrix and choose a family service coordinator agency and other service providers to help them achieve the outcomes they identified on their IFSP. Families are asked to sign the Provider Selection Form to verify that they were offered a choice of providers and to document the name of the early intervention providers that were chosen.

➤ Evaluation and Assessment

EarlySteps ensures that all eligible children receive early intervention services without regard to race, culture, religion, disability, or ability to pay. Eligibility is determined by a multidisciplinary evaluation of the child within 35 days of referral at no cost to the family. During the eligibility evaluation, two or more qualified evaluators gather information about the child's medical and developmental history and current developmental abilities across routines and activities. This information is reviewed and used by the evaluation team, in addition to other information, to determine eligibility for early intervention services and supports. If the team decides that more information is needed, the family will be informed and the

multidisciplinary evaluation team will schedule another visit during specific time period to collect supplementary information about the child and family. Gathering additional information does not extend the 45-day timeline for IFSP completion. If the child is determined to be eligible for early intervention services and supports, an intervention plan must be developed by the 45th day.

If the family does not consent to the eligibility evaluation in writing, an evaluation will not be completed. Thus, eligibility will not be determined and the child and family will not receive ongoing assessment or early intervention services provided through EarlySteps. If the family signs the consent form to proceed with the eligibility determination, the evaluation will be completed. If the team determines that the child and family are eligible for services and supports through EarlySteps, information about the family's concerns, priorities and resources will be collected and used, along with the other information, to develop the intervention plan (IFSP). As part of the implementation of the IFSP, data will be collected via ongoing assessment and reviewed each quarter to determine the child's interests and strengths, child and family's progress in achieving IFSP outcomes, what changes need to be made to the support provided, intervention strategies and/or outcomes. If the team determines that the child is not eligible for EarlySteps, the Notice of Action will be provided to the family detailing the family's rights regarding the decision.

➤ Individualized Family Service Plan

Within 45 days of the referral, each eligible child and family must have a written Individualized Family Service Plan (IFSP). To develop the IFSP, the intake coordinator has a conversation with the family to obtain information about their concerns, priorities and resources for their child and family. This information, along with the results of the eligibility evaluation and ongoing assessment, are used to identify measurable, objective IFSP outcomes for assessing progress, intervention strategies to target the outcomes, how much support is needed by the family to achieve the outcomes and for how long, who is the best early interventionist to provide support to family, where services and supports will be provided, funding source, and transition at various times throughout the process and upon the child's 3rd birthday, especially those transition points where a decision is needed. The IFSP is written for a year and the IFSP team reviews data collected for each outcome on a quarterly basis. The plan must be reviewed every 6-months. Families participate in every team meeting and contribute information to help make decisions about supporting growth for their child and family. Additionally, a family has the right to receive early intervention services and supports in their natural environment within 30 days of consent for the IFSP.

There are timeline exceptions when families are unavailable to provide consent. Information regarding these exceptions is provided in the Practice Manual, Chapter 5.

- **Plain Language:** EarlySteps goals are to complete the evaluation and assessment process in 45 days from referral and have services started within 30 days of the parent's consent on the IFSP. The service plan is reviewed regularly.

➤ System of Payments

Chapter 15 of the EarlySteps Practice Manual outlines EarlySteps procedures for implementing its system of payments which became effective in 2013. As with all other components of the early intervention system, the System of Payments process includes procedural safeguards for families.

The EarlySteps System of Payments is based on a sliding scale schedule called the Federal Poverty Limit (FPL) Schedule. LDH uses this schedule to determine a child's eligibility for Medicaid. EarlySteps also uses this schedule to determine whether a family will be assessed a cost for the IFSP services for which the parent has provided consent. The schedule is updated annually. The schedule uses the family's income and the number of family members residing in the home to determine where the family is placed on the schedule. Families who are below 300% of FPL have no costs associated with their services and are said to have an "inability to pay." For families above 300%, family costs are determined based on the costs of the IFSP services up to a monthly maximum amount. Families are required to provide income information such as paycheck stubs or tax forms and family information such as the number of family members in the home. This information is used to calculate the costs for services on the IFSP and if families meet the definition of "ability to pay." If the family refuses to provide proof of income, the full costs for services will be charged according to the service rate schedule. The family's costs are determined:

- At the Initial IFSP

- At the Annual IFSP
- When a service is added or when a service frequency increases
- Following a family’s request for their cost assessment to be re-determined due to changes in income or family size, extenuating circumstances or extraordinary expenses associated with the care of their child with a disability. The process to reduce a family’s contribution to costs, if the charges create a barrier to services or a financial hardship, will be reviewed with the family.

For children with Medicaid, EarlySteps will notify the family that Medicaid will be used to pay for services and the family is asked to provide consent for use of their child’s Medicaid when consent is initially provided and when an increase in services (including frequency, length, duration, or intensity) is proposed. Families have no costs associated with the use of their child’s Medicaid in EarlySteps.

Procedural safeguards regarding the System of Payments include:

- Prior, written notice
 - of costs for services following the development of the IFSP
 - intention of EarlySteps to bill a child’s Medicaid to pay for services
 - intention of EarlySteps to suspend services after 120 days of nonpayment for services for which a cost has been assigned to the family.
- Consent for services for which family costs will be assessed and the right to revoke that consent at any time
- The ability to receive some services at “no cost” including
 - Evaluation and assessment
 - Child Find provisions
 - Family Support Coordination
 - Activities associated with the development of the IFSP
- Consent to bill Medicaid for IFSP services
- Right to refuse to provide proof of income resulting in charging the family for the full cost of IFSP services
- Dispute Resolution when families disagree with the determination of the assessed costs for IFSP services
- IFSP services when the family meets the EarlySteps definition of “inability to pay.”
- Inability of parents to pay for services will not result in a delay or denial of services.
- Determination of inability to pay according to Louisiana’s definition results in all services being provided at no cost to the family.
- All financial information will be treated confidentially and in accordance with federal and state requirements.
- **Plain Language:** EarlySteps has a process to charge families part of the cost for some of their child’s services based on the family’s ability to pay. There is a process in place to determine the amount and a process to request adjustments to the amount.

Recommended Practice: Providing Procedural Safeguards, Information to Families

While regulations require that a copy of the *Family Rights Handbook* to be provided to families at every point in which parent consent is required, 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 IDEA, 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, or the use of a child’s public benefits or insurance or private insurance to pay for services;
- The right for some services to be provided at no cost to the 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.”

EarlySteps also has a training module which addresses Family Rights on its website.

Intake Coordinators and Family Support Coordinators must all participate in the EarlySteps Module on *Explaining Rights to Families* and should practice how to explain the procedural safeguards to families so that the explanations come easily using everyday language.

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

- A. Know their rights—Target: 91%**
- B. Effectively communicate their child’s needs-Target: 92%; and**
- C. Help their children develop and learn-Target: 93%**



In summary these rights and protections for families are intended to address EarlySteps commitment to:

- **DEC Recommended Practice F1**--building trusting and respectful partnerships with families through interactions that are sensitive and responsive to cultural, linguistic, and socio-economic diversity
- **DEC Recommended Practice F5**--supporting family functioning, promoting family confidence and competence, and strengthen family-child relationships by acting in ways that recognize and build on family strengths and capacities and
- **DEC Recommended Practice F9** - helping families know and understand their rights

General Supervision Performance Expectations

The following are among the items monitored for requirements in meeting IDEA, Part C Policies and Procedures for Procedural Safeguards. When requirements are not met, early interventionists/agencies are issued findings of noncompliance, place under corrective action including possible sanctions.

Performance Expectations	Measurement/Source	Responsibility
Families are provided rights	Signed Notice Documents Signed Receipt of Procedural Safeguards documents	SPOE/FSC Agency
Complaint policies followed and disputes resolved timely	Documentation of complaint Contact LGE/Regional Coordinator Steps in Dispute Resolution Followed Timelines met	LGE/Regional staff SPOE/FSC Agency
Dispute Investigation	Complaint letter sent Regional coordinator interviews complainant and persons responsible for complaint reason and reviews records/documentation Regional coordinator solicits potential resolution(s) Regional coordinator completes review and issues decision	LGE/Regional Coordinator
Resolution	Regional coordinator: -- writes findings letter -- issues requirements for CAP/sanctions --provides family appeal rights	Regional Coordinator Family or other Complainant Person against whom complaint issued.
Prior written notice	Notice documents sent, parent signature obtained prior to implementation of change	SPOE/FSC Agency
Consent	Parent consent as determined by parent signature obtained for required consent items	SPOE/FSC Agency
Confidentiality	Part C, HIPAA and FERPA requirements followed	All practitioners
Opportunity to examine records	Family requests to examine child records documented and process to provide the records is followed.	All practitioners
Accepting/Declining services and refusing to sign documents	Documentation of service acceptance/refusal by family such that families receive support in agreed upon areas	All practitioners
Families are offered Freedom of Choice in selection of agencies and practitioners	Documentation on team meeting notes and/or service authorizations of choice offer and family agreement.	SPOE/FSC agencies
System of Payment requirements met as indicated on signed Family Notice Statement.	Documentation in EarlySteps Online and/or child charts that the notice statement is signed	SPOE/FSC agencies

References:

Division for Early Childhood. (2014, 2016). DEC Recommended Practices. Retrieved from <http://www.dec-sped.org/recommendedpractices> or <http://www.ectacenter.org>.

Hurth, JL and Goff, P (2002) Assuring *the family's role on the early intervention team: Explaining rights and safeguards* (2nd edition). Chapel Hill, NC: National Early Childhood Technical Assistance Center.

Notice of Child and Family Safeguards in the Infant & Toddler Connection of Virginia, Part C Early Intervention System. December, 2002.

Family Rights Handbook, Department of Health and Senior Services (DHSS), Lead Agency for New Jersey's Early Intervention System, revised October, 2009.

IDEA, Part C Final Regulations: Federal Register, September 2011, <https://www2.ed.gov/policy/speced/reg/idea/part-c/index.html>

Understanding Procedural Safeguards

Summary of Family Rights: Implications for Families

Prior, written notice (34 CFR§303.404 and 303.420-.421)

EarlySteps must give you advance written information about screening, evaluations, services, or other actions affecting your child. Parents know their children best. The information you share with us will make sure that the evaluations and services are right for you. The "paper work" assures that you get all the details *before* any activity occurs.

Use of parent's native language or preferred mode of communication (34 CFR§.25 and .421)

It is your right to thoroughly understand all activities and written records about your child. If you prefer another language or way of communicating (such as Braille, sign language, etc.), we will get an interpreter (use your mode of communicating), if at all possible. EarlySteps wants you to understand so that you can be an informed team member and decision-maker.

Parent consent (34 CFR §303.414 and .420)

EarlySteps needs your permission to take any actions that affect your child. You will be asked to give your consent in writing before we evaluate or provide services or bill you or your child's Medicaid for service costs. Be sure you completely understand the suggested activities. By being involved, you can help EarlySteps plan services that match your family's preferences and needs. EarlySteps will explain what happens if you give your consent and if you do not give your consent.

Parent Consent and ability to decline services (§.420)

With the other members on your child's early intervention team, you will consider which services can best help you accomplish the outcomes that you want for your child and family. You will be asked to give your consent by signing for those services that you want. You do not have to agree to all services recommended. You can say no to some services and still get the services that you do want. When you decline a service, any impact on your decision will be explained. If you decide to try other services at a later date, you can give your consent at that time.

Confidentiality (34 CFR§303.401-.402)

EarlySteps values the information you and other service and health care providers have learned about your child. We will ask others for this information, but we need your written permission to do so. Just as the early intervention program needs your permission to get your child's records from physicians, hospitals, etc., the records that the early intervention program will develop will not be shared with anyone outside the early intervention program unless you give your permission. EarlySteps will assure your records are kept private.

Access to records (34 CFR§303.405-410)

The early intervention record is your child's early intervention record. You can see anything in the early intervention program's records about your child and family. If you do not understand the way records are written, the information in the child's record will be explained to you in a way you understand. You are a team member and we want you to have the same information as other team members. You can request copies of records and you can request changes to records.

Dispute Resolution (34 CFR§303.430)

If you and the early intervention team do not agree on plans, services, or payments, or if you have other complaints about your experience with the program, there are three ways of resolving your concerns quickly in EarlySteps:

Complaints (34CFR§303. 432)

If informal ways of sharing your concerns with your team and the early intervention program do not work, you may file a complaint by calling the regional Human Services District/Authority office or the EarlySteps Regional Coordinator. Your complaint will be investigated and a resolution offered.

Mediation (34CFR§303.431)

Mediation will also be offered. A trained, impartial mediator will facilitate problem-solving between you and EarlySteps. You may be able to reach an agreement that satisfies you both. If not, you can go ahead with a due process hearing to resolve your complaint. Mediation will not slow down the hearing process. Airing and solving problems can improve communication and make programs stronger.

Due process procedures (34CFR§303.435-.438)

A due process hearing is a formal procedure that begins with a written complaint. The hearing will assure that a knowledgeable and impartial person called a hearing officer or an administrative law judge, from outside the program, hears your complaint and decides how to best resolve it. EarlySteps recognizes your right to make decisions about your child and will take your concerns seriously to resolve your issue.

Surrogate Parent (34CFR§303.422)

Children in EarlySteps have a right to be represented in early intervention decisions when no parent can be found. The lead agency is responsible for making the decision that a surrogate parent is needed and developing procedures for identifying a surrogate parent.

Other safeguards provided to you:

- **Screening, Evaluation, and Assessment** provided at no cost to you.
- **Services provided in the natural environment** according to an IFSP developed within 45 days of referral.
- **Services begin** within 30 days of your consent to IFSP services.
- **Freedom of Choice** in provider selection.
- **Consent** prior to use of your child's Medicaid before you will be billed for any services.

You are given a copy of your Rights every time decisions are made about your child. The *Family Rights Handbook* describes all of these rights and procedures in detail, because EarlySteps values your role as a team member and wants you to understand them. If you have questions, call your family support coordinator, your regional coordinator, or your regional Human Services District/Authority.