

PARENTS' RIGHTS AND RESPONSIBILITIES IN THE EARLY START PROGRAM UNDER IDEA

EVALUATION AND ASSESSMENT

The determination of eligibility for Early Start in California includes a timely, comprehensive, multidisciplinary evaluation and assessment of every child under three years of age who is suspected to be in need of early intervention services. If no parent or guardian is available or the child is a ward of the court, a knowledgeable surrogate parent who has no conflicting interest will be appointed by a regional center or LEA, under Title 17, Section 52175.

Procedural safeguards ensure that families are provided their rights under the law.

As a parent, you have the right to:

1. be fully informed of your rights under Early Start;
2. refer your child for evaluation and assessment, provide information throughout the process, make decisions, and give informed consent for your child's early intervention services;
3. understand and provide voluntary written permission or refusal before the initial evaluation and assessments are administered; Consent for evaluation and assessment is required only at the time of initial evaluation and assessment to receive services. (If consent is refused, the regional center or LEA may take steps to obtain an initial evaluation without parental consent.);
4. participate in the initial evaluation and assessment process including eligibility determination;
5. receive a completed initial evaluation and assessment within 45 days after the referral of your child to a regional center or an LEA;
6. participate in a meeting to share the results of evaluations and assessments; and
7. participate in all decisions regarding eligibility and services.

THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) REQUIRES THAT:

1. Evaluation and assessment materials are administered in the language of the parents' choice or other mode of communication, unless it is clearly not feasible to do so.
2. Evaluation and assessment procedures and materials are selected and administered so as not to be racially or culturally discriminatory.
3. Evaluation and assessment materials are appropriate to assess the specific areas of developmental need and are used for the specific purposes for which they were designed.
4. Evaluations and assessments are conducted by qualified personnel.
5. Evaluations and assessments administered to children with known vision, hearing, orthopedic, or communication impairments are selected to accurately reflect the child's developmental level.
6. Evaluations and assessments are administered in the five developmental areas, which include physical development (motor abilities, vision, hearing, and health status); communication development; cognitive development; adaptive development; and social or emotional development. Assessments and evaluations are ongoing while your child is in Early Start.
7. Evaluations and assessments shall be conducted in natural environments whenever possible.
8. Pertinent records relating to your child's health status and medical history are reviewed.
9. No single procedure is used as the sole criterion for determining your child's eligibility for early intervention services.
10. Interviews to identify family resources, priorities, and concerns regarding the development of your child and your family's needs are voluntary.

INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

An Individualized Family Service Plan (IFSP) is a written plan for providing early intervention services to an eligible child and the child's family. For an infant or toddler who has been evaluated for the first time, a meeting must take place within 45 days of the referral to the regional center or LEA to share the results of the evaluation, to determine eligibility, and, for children who are eligible, to develop the initial IFSP. Evaluation results and determination of eligibility may be shared with families prior to the first IFSP meeting.

A periodic review of your child's IFSP must take place at least every six months. A review may occur more frequently if there are any changes to the IFSP or if you request a periodic review with the regional center or LEA. The IFSP must also be reviewed annually to evaluate how your child is doing and to make any needed changes to the IFSP.

During the development and implementation of an IFSP, you have the right as the parent to:

1. attend the IFSP meetings and participate in developing the IFSP;
2. invite other family members to attend IFSP meetings;
3. invite an advocate or persons other than family members to attend and participate in the IFSP meetings;
4. have a copy of the complete IFSP;
5. have the contents of the IFSP fully explained in the language of your choice;
6. give consent to services listed on the IFSP. If you do not give consent to a service, it will not be provided. You may withdraw consent after initially accepting or receiving a service;
7. have services provided in the natural environment or an explanation of why that is not possible;
8. exchange information about your child among other agencies;
9. be notified in writing before any agency or service provider proposes or refuses to initiate or change your child's identification, evaluation, assessment, placement, or the provision of appropriate early intervention services to your child or your family. The notice must contain:
 - the action that is proposed or refused,
 - reasons for the action, and
 - all available procedural safeguards.

The notice must be presented in the language of your choice, unless it is clearly not feasible to do so, and may be translated so that you understand its contents; and
10. voluntarily use private insurance to pay for evaluation, assessment, and required early intervention services on the IFSP.

MEDIATION CONFERENCES, DUE PROCESS HEARINGS, AND STATE COMPLAINTS

In Early Start, parents have rights and protections to assure that early intervention services are provided to their children in a manner appropriate to their needs, in consideration of family concerns, and in compliance with applicable federal and State statutes and regulations. The following procedures are only for children under the age of three years.

As a parent, you have the right to:

1. request a due process hearing any time a regional center or LEA proposes or refuses to initiate or change the identification, evaluation, assessment, placement, and/or provision of appropriate early intervention service(s);
2. be informed of your right to file a complaint or a request for mediation and/or due process;
3. file a complaint if you believe there has been a violation of any federal or state statute or regulation governing early intervention services under Early Start including eligibility and services;
4. request a mediation conference immediately, prior to a complaint or due process hearing request, or at any time during the complaint/due process hearing processes to resolve a dispute related to any matter concerning federal or state statute or regulation governing early intervention services under Early Start; and
5. file a complaint if a due process decision fails to be implemented.

Mediation Conference

Mediation is a voluntary, non-binding, confidential process in which a neutral mediator facilitates settlement negotiations between you and another party. Voluntary mediation conferences are an informal way to resolve disagreements with early intervention service agencies or to address alleged violations of any state and federal statutes or regulations.

As a parent you have the right to:

1. file a request for mediation as the initial option for resolving a dispute or any time during the due process hearing or complaint process,
2. request a due process hearing or file a state complaint if the disagreement is not resolved,
3. refuse to participate in mediation.
4. have an impartial person facilitate the mediation conference,
5. require that the mediation conference is carried out at a time and in a location that is reasonably convenient for you,
6. have all personally identifiable information maintained in a confidential manner, and
7. receive a written document outlining the agreements reached as a result of the mediation conference.

Requests for mediation are filed with the:

Office of Administrative Hearings
 Attention: Early Start Intervention Section
 2349 Gateway Oaks Drive, Suite 200
 Sacramento, CA 95833
 (916) 263-0654 Fax: (916) 376-6318

Due Process Hearings

All parents are encouraged to resolve differences at the lowest administrative level possible. When differences between you and a regional center or LEA cannot be resolved, due process hearings are available. You, as a parent, are encouraged to seek assistance from your child's service coordinator, the regional center, or the Special Education Local Plan Area (SELPA) office.

Circumstances leading to a due process hearing may be disagreements related to a proposal or refusal for identification, evaluation, assessment, placement, or services.

Your child will continue to receive the early intervention services identified on the IFSP that he/she is currently receiving unless you and the regional center or LEA otherwise agree to a change. If your disagreement involves a new service that has not started, your child will receive all services identified on the IFSP that are not in dispute. This does not include your regional center providing early intervention services after your child has reached 36 months of age, as federal law and regulations do not allow states to pay for early intervention services under any circumstances once your child transitions from Early Start. The program or programs your child enrolls in subsequent to transition from Early Start is responsible for providing you and your child services for which he or she is eligible to receive.

Requests for a due process hearing are filed at the following address:

Office of Administrative Hearings
Attention: Early Start Intervention Section
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833
(916) 263-0654 Fax: (916) 376-6318

**The due process hearing request form may be obtained from your service coordinator, the regional center, the LEA, and the Department of Developmental Services (DDS) website: www.dds.ca.gov/Forms/pdf/DS1802.pdf*

The due process hearing must be completed within 30 days of receipt of the request by the Office of Administrative Hearings. The timely issuance of the written decision may not be delayed by any concurrent voluntary local efforts to resolve the matter. The decision will be final unless appealed.

As a parent, you have the right to:

1. have the due process hearing conducted by an impartial person, not employed by an agency serving your child, who is knowledgeable in the laws relating to early intervention and the service needs of infants, toddlers, and families;
2. require that the proceeding is carried out at a time and in a location that is reasonably convenient for you;
3. have all personally identifiable information maintained in a confidential manner;
4. bring a civil action against the other party following completion of the proceeding if you disagree with the results;
5. receive services identified on the IFSP that are not in dispute; and
6. have mediation discussions kept confidential and not used as evidence in any subsequent due process or civil proceedings.

During a due process hearing, you also have the right to:

1. be accompanied and advised by counsel and/or by individuals with special knowledge with respect to early intervention services for children under age three years;
2. present evidence, confront, cross-examine, and compel the attendance of witnesses;
3. prohibit the introduction of any evidence at the proceeding that has not been disclosed to you at least five days before the proceeding begins;
4. obtain a written or electronic verbatim transcription of the proceeding; and
5. obtain written findings of facts and decisions within 30 days from the date the request is filed.

State Complaints

Any individual or organization may file a signed, written complaint against the DDS, the California Department of Education (CDE), or any regional center, LEA, or private service provider that receives Part C funds alleging violation of any state or federal early intervention statute or regulation. However, even though DDS is mandated to investigate any complaint it receives, state law does not allow disclosure of the Early Start recipient's personally identifiable information without written parental consent, other than authorized employees specified by the regional center or LEA.

Information or assistance in filing complaints is available from your child's service coordinator, the regional center office, or the SELPA. DDS and CDE are available for consultation regarding the filing of a complaint. Additional assistance is available from advocacy organizations such as the State Council on Developmental Disabilities or Disabilities Rights California.

Complaints are filed directly with the:
 Department of Developmental Services
 Office of Human Rights and Advocacy Services
 Attention: Early Start Complaint Unit
 1600 9th Street, MS 2-15
 Sacramento, CA 95814
 (916) 654-1888 Fax: (916) 651-8210

Any individual or organization who files a complaint has the right to:

1. receive assistance in filing the complaint from a service coordinator, regional center, and/or LEA;
2. not be compelled to use any other procedures under the Education Code or the Lanterman Developmental Disabilities Services Act to resolve the complaint;
3. submit additional information to DDS that may be helpful to the investigation;
4. receive a final written decision within 60 days of the date DDS receives the complaint;
5. receive appropriate remedies that may include monetary reimbursement or other corrective action, and assurance that services will be provided appropriately in the future if the decision of DDS includes remedies for denial of appropriate services;
6. have any issue in a complaint that is not part of a due process hearing be resolved by DDS within 60 days of the receipt of the complaint;
7. be notified by DDS that the hearing decision is binding if an issue is being raised in a complaint that had previously been decided in a due process hearing involving the same parties; and
8. have any complaint resolved that alleges the failure of a public agency or private service provider to implement a due process decision.

The complaint must:

1. be in writing and contain a signed statement alleging that DDS, CDE, the regional center, LEA, or other service provider involved with Early Start has violated a federal or state law or regulation;
2. provide the name, address, and phone number of the complainant;
3. contain a statement of facts upon which the violation is based;
4. include the name of the party against whom the complaint is being filed;
5. have occurred not more than one year before the date the complaint is received by DDS unless a longer period is reasonable because the alleged violation continues for the child or other children, or

6. have occurred not more than three years before the date on which the complaint is received by DDS if the complainant is requesting reimbursement or corrective action as remediation of the complaint;
7. the complaint may also include, if applicable, a description of the voluntary steps pursued at the local level to resolve the complaint; and
8. be withdrawn if the Complainant elects to participate in mediation within the 60 day complaint investigation.

