



Massachusetts Early Intervention Procedural Safeguards Notice

Early intervention (EI) services in Massachusetts are provided under Part C of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1431 et seq., and its implementing regulations at 34 CFR Part 303. The Department of Health (DPH) Early Intervention Division (Early Intervention Division) is the Lead Agency designated under 34 CFR §303.120 responsible for administering Part C Early Intervention in Massachusetts and ensuring compliance with IDEA Part C.

This notice explains the procedural safeguards and rights available to parents of eligible infants and toddlers. These protections ensure that parents are informed participants in decision-making regarding their children and that their children's rights are protected the point in time when the child is referred for early intervention services under IDEA Part C until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable Federal and State laws (§303.401(c)(2))

General Responsibility of Lead Agency for Procedural Safeguards (§303.400)

The Early Intervention Division adopts the procedural safeguards within 34 CFR Part 303 Subpart E, and requires effective implementation of these safeguards by each participating agency (including the Early Intervention Division, and EIS providers) within the Massachusetts Early Intervention system, including an initial copy of the child's early intervention record, at no cost and in the native language of the parents. These Procedural Safeguards including the provisions on confidentiality (§§ 303.401-303.417), parental [consent](#) and notice (§§ 303.420-303.421), surrogate parents (§ 303.422), and dispute resolution procedures (§ 303.430).

Confidentiality and Opportunity to Examine Records (§303.401)

Parents of a child referred to early intervention are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written [consent](#) to, the exchange of that information among agencies, consistent with Federal and State laws.

Confidentiality Procedures

As required under sections 617(c) and 642 of the IDEA Part C, the regulations in §§ 303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary (ED) and by participating agencies, including the Early Intervention Division, and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR part 99.

Procedures are in effect to ensure that participating agencies (including the Early Intervention Division and EIS providers) comply with the IDEA Part C confidentiality procedures in §§ [303.401](#) through [303.417](#) and that parents of infants or toddlers who are referred to, or receive early intervention services, are afforded the opportunity to inspect and review all early intervention records about the child and the child's family that are collected, maintained, or used under IDEA Part C. This includes records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record

Applicability and Timeframe of Procedures

Confidentiality procedures described in the confidentiality procedures section apply to the personally identifiable information (PII) of a child and the child's family that is contained in early intervention records collected, used, or maintained under IDEA Part C by the Early Intervention Division or an EIS provider. Confidentiality procedures apply from the point in time when the child is referred for early intervention services under IDEA Part C until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable Federal and State laws.

Disclosure of Information

Subject to the option to inform a parent about intended disclosure The Early Intervention Division must disclose to the state educational authority (SEA) and the local education authority (LEA) where the child resides, in accordance with [§ 303.209\(b\)\(1\)\(i\)](#) and [\(b\)\(1\)\(ii\)](#), the following personally identifiable information (PII) under IDEA Part C needed to enable the Early Intervention Division, as well as LEAs and SEA's to identify all children potentially eligible for services under [§ 303.211](#) and IDEA Part B. The PII disclosed is the child's name, date of birth, and parent contact information (including parents' names, addresses, and telephone numbers).

Option to Inform a Parent about Intended Disclosure

The Early Intervention Division's policies require EIS providers, prior to making the limited disclosure described in disclosure of section, to inform parents of a toddler with a disability of the intended disclosure and allow the parents 30 days from the date they are informed of this option to indicate to object to (opt out) the disclosure in writing. If a parent objects during the 30 day time period the Early Intervention Division and EIS provider are not permitted to make such a disclosure under [paragraph \(d\)](#) of this section and [§ 303.209\(b\)\(1\)\(i\)](#) and [\(b\)\(1\)\(ii\)](#).

Confidentiality (§303.402)

The Secretary (ED) takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by the Early Intervention Division, as the Lead Agency, and EIS providers pursuant to part C of the Act, and consistent with §§ 303.401 through 303.417. The regulations in §§ 303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary (ED) and by participating agencies, including the Early Intervention Division, as the Lead Agency, and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR part 99.

Definitions (§303.403)

For purposes of confidentiality requirements (§§303.402 through 303.417), the following definitions apply

1. **Destruction:** Physical destruction of a record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable, consistent with §303.29.
2. **Early intervention records:** All records regarding a child that are required to be collected, maintained, or used under Part C of the IDEA and the regulations in 34 CFR Part 303.
3. **Participating agency:** Any individual, agency, entity, or institution that collects, maintains, or uses, personally identifiable information to implement the requirements of Part C of IDEA and the regulations in this part with respect to a particular child. A participating agency includes the Lead Agency, EIS providers, and any individual or entity that provides Part C services, including service coordination, evaluations and assessments, and other early intervention services. A participating agency does not include primary referral sources or public agencies (such as the State Medicaid or Children's Health Insurance Program) or private entities (such as private insurance companies) that act solely as funding sources for Part C services

Notice to Parents (§303.404)

The Early Intervention Division must ensure parents are given notice when a child is referred to IDEA Part C that is adequate to fully inform parents about the confidentiality requirements, including

- a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information
- a summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information

- a description of all the rights of parents and children regarding this information, including their rights under the part C confidentiality provisions in §§ 303.401 through 303.417
- a description of the extent that the notice is provided in the native languages of the various population groups in the State.

Access Rights (§303.405)

Parents have the right to inspect and review any early intervention records relating to their child that are collected, maintained, or used by the Early Intervention Division under Part C of IDEA. Parents must be afforded the opportunity to inspect and review early intervention records without unnecessary delay before any IFSP meeting or due process hearing relating to the child and in no case more than 10 days after the request has been made.

Parents' right to inspect and review early intervention records under this section includes the right

- to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention record
- to request that the participating agency provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records
- to have a representative of the parent inspect and review the early intervention records.

An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been provided documentation that the parent does not have the authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce.

Record of Access (§303.406)

Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under IDEA Part C (except access by parents and authorized representatives and employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.

Records on More Than One Child (§303.407)

If an early intervention record contains information pertaining to multiple children, parents may inspect and review only the portion of the record that relates to their child or be informed of the specific information that pertains to their child.

List of Types and Locations of Information (§303.408)

Parents have the right to request a list of the types and locations of early intervention records collected, maintained, or used by participating agencies under Part C.

Massachusetts requires participating agencies to provide this information within five (5) days of the parent's request, consistent with Massachusetts Early Intervention Operational Standards.

Fees for Records (§303.409)

Parents have a right to the initial copy of each evaluation, assessment, and Individualized Family Service Plan (IFSP) provided following an IFSP meeting at no cost. A fee may not be charged to parents to search for or retrieve early intervention records. However, each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. If a fee is charged for additional copies of records, the fee must be consistent with applicable Massachusetts policies governing record copying fees and may not exceed the actual cost of reproduction.

When records are requested in connection with an IFSP meeting or a due process hearing, the Early Intervention Division or provider must ensure that the records are made available in sufficient time to allow the parent to review them before the meeting or hearing, consistent with the timelines specified in this section.

Amendment of Records at Parent's Request (§303.410)

Parents who believe that information in the early intervention records collected, maintained, or used under Part C of IDEA is inaccurate, misleading, or violates the privacy or other rights of the child or parent, may request that the participating agency that maintains the information amend the record. The participating agency will review the request and determine whether to amend the record within a reasonable period of time. If the participating agency determines that the information should be amended, they will do so and inform the parent in writing. If the participating agency determines that the information should not be amended, they will inform the parent in writing of the refusal and of the parent's right to a hearing in accordance with §303.411.

Opportunity for a Hearing (§303.411)

If a participating agency refuses to amend a record requested by a parent under §303.410, the parent has the right to request a hearing to challenge the content of the child's record. A parent may request a due process hearing under the procedures in § 303.430(d)(1) provided that such hearing procedures meet the requirements of the hearing procedures in § 303.413 or may request a hearing directly under the State's procedures in § 303.413 (i.e., procedures that are consistent with the FERPA hearing requirements in 34 CFR 99.22).

Result of Hearing (§303.412)

Following a hearing conducted under §303.411, if the hearing officer determines that the information contained in the record is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parent, the participating agency must amend the record accordingly and inform the parent in writing. If the hearing officer determines that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parent, the participating agency must inform the parent of the right to place a written statement in the record, commenting on the contested information or stating the parent's disagreement with the decision.

Any explanation placed in the early intervention record by the parent must be maintained by the agency as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency, and disclosed by the agency to any party, the explanation must also be disclosed to the party, if the early intervention records of the child or the contested portion are disclosed.

Hearing Procedures (§303.413)

A hearing held under § 303.411 must be conducted according to the procedures under 34 CFR 99.22 which require

- the hearing be held within a reasonable time after it has received the request for the hearing from the parent or eligible student.
- the parents be given reasonable advance notice of the date, time, and location of the hearing
- the hearing is conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing
- the parent be given fair opportunity to present evidence relevant to the issues raised
- the parent, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney
- the decision be in writing within a reasonable period of time after the hearing
- the decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision

. At the hearing, parents have the opportunity to

- present evidence and testimony relevant to the disputed information
- be assisted or represented by individuals of the parent's choosing, including an attorney or advocate
- request that the hearing officer consider whether the information in the record should be amended

If the hearing officer determines that the information is in violation of the privacy or other rights of the child or parent, the participating agency must amend the record accordingly and inform the parent in writing, consistent with §303.412.

If the hearing officer determines that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parent, the participating agency must inform the parent of the right to place a statement in the record commenting on the contested information or stating the parent's disagreement with the decision, in accordance with §303.412. This section applies only to hearings regarding requests to amend early intervention records and does not replace or limit a parent's right to pursue mediation, formal administrative complaint (State complaint) procedures, or a due process hearing under the dispute resolution procedures established under 34 CFR §§303.430-303.438.

Consent Prior to Disclosure or Use (§303.414)

Parental consent must be obtained before personally identifiable information (PII) is disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under IDEA Part C or for any purpose other than meeting the requirement of IDEA Part C. However, disclosure may be authorized without parental consent under the confidentiality provisions of IDEA Part C and the Family Educational Rights and Privacy Act (FERPA).

Personally identifiable information contained in the child's early intervention records will not be disclosed without the written informed consent of the parent, except as permitted under Federal or State law (e.g., health or safety emergencies, oversight and monitoring activities conducted by authorized state or federal agencies), and compliance with lawful subpoena or court order.

Consistent with the requirements of 34 CFR §303.209(b), the Early Intervention Division must notify the local educational agency (LEA) and the State educational agency (SEA) when a toddler receiving early intervention services is potentially eligible for preschool services under Part B of the IDEA unless a parent opts out of the disclosure, the information provided to the LEA must be limited to

- the child's name
- the child's date of birth
- the parent's name and contact information

The Lead Agency must provide policies and procedures to be used when a parent refuses to provide consent under this section (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this part), provided that those procedures do not override a parent's right to refuse consent under § 303.420.

Safeguards (§303.415)

Each participating agency must

- protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.
- assign staff responsibility for ensuring the confidentiality of any personally identifiable information.
- ensure the staff training or instruction regarding the State's policies and procedures under IDEA part C Subpart E §§ 303.401 - 303.417 and Family Educational Rights and Privacy Act (FERPA) (34 CFR part 99).
- maintain a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information

Destruction of Information (§303.416)

The participating agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, EDGAR, 34 CFR part 76, and 2 CFR part 200, as adopted in 2 CFR part 3474.

The information must be destroyed at the request of the parents. However, a permanent record of a child's name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and EIS provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation.

In Massachusetts, early intervention services providers may retain records for a period of up to seven years following a child's discharge from early intervention services, unless the parent requests earlier destruction of the personally identifiable information when it is no longer needed.

Enforcement (§303.417)

The Early Intervention Division, as the Lead Agency designated under 34 CFR §303.120 ensures that all participating agencies and early intervention services providers policies and procedures, including sanctions and the right to file a complaint under §§ 303.432 through 303.434, that the State uses to ensure that its policies and procedures, consistent with §§ 303.401 through 303.417, are followed and that the requirements of IDEA Part C and the regulations in this part are met.

Parental Consent (§303.420)

The Early Intervention Division ensures parental [consent](#) is obtained before

- all evaluations and assessments of a child are conducted under [§ 303.321](#)
- early intervention services are provided to the child under IDEA Part C
- public benefits or insurance or private insurance (including MassHealth) is used [§ 303.520](#)
- disclosure of personally identifiable information consistent with [§ 303.414](#)

If a parent does not give consent, the Early Intervention Division makes reasonable efforts to ensure that the parent

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

The Early Intervention Division ensures IDEA Part C due process hearing procedures are not used to challenge a parent's refusal to provide any consent that is required. Parents of an infant or toddler with a disability

- determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention service under this part at any time
- may decline a service after first accepting it, without jeopardizing other early intervention services under this part.

Prior Written Notice and Procedural Safeguard Notice (§303.421)

Prior written notice must be provided to parents a reasonable time before the Lead Agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family ([§303.421\(a\)](#)).

Content of Notice

The notice must be in sufficient detail to inform parents about

1. the action that is being proposed or refused;
2. the reasons for taking the action; and
3. all procedural safeguards that are available under IDEA Part C Subpart E, including a description of mediation in [§ 303.431](#), how to file a formal administrative (State) complaint in [§§ 303.432](#) through [303.434](#) and the Part C due process hearing complaint adopted under [§ 303.430\(d\)](#), and any timelines under those procedures.

Native Language

The notice must be written in language understandable to the general public; and provided in the native language, as defined in [§ 303.25](#), of the parent or other mode of communication used by the parent, 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 EIS provider must 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 understands the notice; and there is written evidence that the requirements of this paragraph have been met.

Surrogate Parents (§303.422)

Each Lead Agency or other public agency must ensure that the rights of a child are protected when no parent (as defined in § 303.27) can be identified, the Lead Agency or other public agency, after reasonable efforts, cannot locate a parent, or the child is a ward of the State under the laws of that State.

The duty of the Lead Agency, or other public agency includes the assignment of an individual to act as a surrogate for the parent. This assignment process must include a method for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child.

For children who are wards of the State or placed in foster care, the Lead Agency must consult with the public agency that has been assigned care of the child. In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by the Lead Agency, may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent

- is not an employee of the Lead Agency or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child
- has no personal or professional interest that conflicts with the interest of the child he or she represents
- has knowledge and skills that ensure adequate representation of the child

A person who is otherwise qualified to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent. The surrogate parent has the same rights as a parent for all purposes under IDEA Part C. The Lead Agency must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

Massachusetts Dispute Resolution Options (§303.430)

The Early Intervention Division makes dispute resolution options available and includes written procedures for the timely administrative resolution of complaints through mediation, State complaint, and due process hearing procedures.

- Mediation is available to parties to disputes involving any matter under IDEA Part C the opportunity for mediation that meets the requirements in § 303.431.
- Formal Administrative Complaint (State complaint) procedures resolve complaints filed by any party regarding any violation of IDEA Part C or state operational standards that meet the requirements in §§ 303.432 through 303.434.
- Due process hearing to resolve complaints with respect to a particular child regarding any matter identified in § 303.421(a), by adopting IDEA Part C hearing procedures in §§ 303.435 through 303.438; and a means of filing a due process complaint regarding any matter listed in § 303.421(a)

During the pendency of any proceeding involving a due process complaint, unless the Early Intervention Division and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents. If the due process complaint involves an application for initial services under IDEA Part C, the child must receive those services that are not in dispute. These options are available at no cost to families.

Mediation (§303.431)

The Early Intervention Division, as the Lead Agency for Massachusetts Part C, adopts the Mediation procedures under 34 CFR 303.431 to allow the parties to resolve disputes involving any matter under Part C of the Individuals with Disabilities Education Act (IDEA) at any time, including prior to the filing a due process complaint.

The Early Intervention Division arranges for the conduct of mediations through an interagency agreement with the Division of Administrative Law Appeals (DALA), Bureau of Special Education (BSEA). The Early Intervention Division retains responsibility for ensuring mediations are conducted in accordance with Part C of IDEA and 34 CFR 303.431. The use of an interagency agreement does not transfer the DPH's legal authority, procedural safeguards responsibility, or timelines under Part C.

The procedures ensure that the mediation process is

- voluntary on the part of the parties;
- not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under IDEA Part C
- conducted by a qualified and impartial mediator who is trained in effective mediation techniques

The Early Intervention Division

- maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention
- ensures mediators are selected on a random, rotational, or other impartial basis
- bears the cost of the mediation
- ensures each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute

If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The agreement is signed by both the parent and a representative of the Lead Agency who has the authority to bind such agency.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part. An individual who serves as a mediator under this part must be impartial. This means they must not

- be an employee of the Early Intervention Division or an EIS provider that is involved in the provision of early intervention services or other services to the child
- have a personal or professional interest that conflicts with the person's objectivity.
- be considered an employee of a Lead Agency or an early intervention provider solely because he or she is paid by the agency or provider to serve as a mediator

Adoption of State Complaint Procedures (§ 303.432)

The Early Intervention Division, as the Lead Agency for Massachusetts Part C adopts written procedures for

- resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements in § 303.434 by providing for the filing of a complaint with the Early Intervention Division
- widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy (P&A) agencies, and other appropriate entities, procedures under §§ 303.432 through 303.434.

In resolving a complaint in which the Early Intervention Division has found a failure to provide appropriate services, the Early Intervention Division, pursuant to its general supervisory authority under IDEA Part C, must address the failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement) and appropriate future provision of services for all infants and toddlers with disabilities and their families.

Minimum State Complaint Procedures (§ 303.433)

Each Lead Agency must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 303.434 to

- carry out an independent on-site investigation, if the Lead Agency determines that an investigation is necessary
- give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint

- provide the Early Intervention Division, public agency, or EIS provider with an opportunity to respond to the complaint, including a proposal to resolve the complaint
- an opportunity for a parent who has filed a complaint and the Early Intervention Division, public agency, or EIS provider to voluntarily engage in mediation, consistent with [§§ 303.430\(b\)](#) and [303.431](#)
- review all relevant information and make an independent determination as to whether the Early Intervention Division, public agency, or EIS provider is violating a requirement of IDEA Part C or Massachusetts Operational Standards
- issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusions; and the reasons for the Early Intervention Division's final decision.

The Early Intervention Division's procedures also must permit an extension of the time limit only if exceptional circumstances exist with respect to a particular complaint and the parent (or individual or organization) and the Early Intervention Division, public agency or EIS provider involved agree to extend the time to engage in mediation

The Early Intervention Division must ensure procedures for effective implementation of the Lead Agency's final decision, if needed, including

- technical assistance activities
- negotiations
- corrective actions to achieve compliance

If a written complaint is received that is also the subject of a due process hearing or contains multiple issues of which one or more are part of that hearing, the Early Intervention Division 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 hearing must be resolved using the time limit and procedures previously described. If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties the due process hearing decision is binding on that issue, and the Early Intervention Division must inform the complainant to that effect

A complaint alleging a Lead Agency, public agency, or EIS provider's failure to implement a due process hearing decision must be resolved by the Lead Agency.

Filing a Complaint (§ 303.434)

An organization or individual may file a signed written complaint under the procedures described in [§§ 303.432](#) and [303.433](#).

The complaint must include

- a statement that the Lead Agency, public agency, or EIS provider has violated a requirement of part C of the Act
- the facts on which the statement is based

- the signature and contact information for the complainant
- if alleging violations with respect to a specific child
 - the name and address of the residence of the child
 - the name of the EIS provider serving the child
- a description of the nature of the problem of the child, including facts relating to the problem
- a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the Early Intervention Division.

Due Process Hearing (§§303.435-303.438)

The Early Intervention Division adopts the Part C Due Process Hearing procedures under 34 CFR 303.435-303.438 (section 639 of the Individuals with Disabilities Education Act (IDEA) to resolve a disagreement regarding a specific child over any matter identified in 34 CFR § 303.421 (a).

The Early Intervention Division arranges for the conduct of due process hearings through an interagency agreement with the Division of Administrative Law Appeals (DALA) and the Bureau of Special Education (BSEA). The Early Intervention Division retains responsibility for ensuring due process hearings are conducted in accordance with Part C of IDEA and 34 CFR 303.435-303.438.

Appointment of an Impartial Due Process Hearing Officer (§303.435)

Whenever a due process complaint is received under § 303.430(d), a due process hearing officer must be appointed to implement the complaint resolution process in this subpart. The person must

- have knowledge about the provisions of this part and the needs of, and early intervention services available for infants and toddlers with disabilities and their families
- listen to the presentation of relevant viewpoints about the due process complaint
- examine all information relevant to the issues
- seek to reach a timely resolution of the due process complaint
- provide a record of the proceedings, including a written decision

Definition of Impartial

Impartial means that the due process hearing officer appointed to implement the due process hearing under IDEA Part C

- is not an employee of the Early Intervention Division (Lead Agency) or an EIS provider involved in the provision of early intervention services or care of the child
- does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process
- is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this part

Parental Rights in Due Process Hearing Proceedings (§ 303.436)

The Early Intervention Division ensures that the parents of a child referred to Part C are afforded the rights in the due process hearing carried out under § 303.430(d). Any parent involved in a due process hearing has the right to

- be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for infants and toddlers with disabilities
- present evidence and confront, cross-examine, and compel the attendance of witnesses
- prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing
- obtain a written or electronic verbatim transcription of the hearing at no cost to the parent
- receive a written copy of the findings of facts and decisions at no cost to the parent

Convenience of Hearings and Timelines (§ 303.437)

IDEA Part C due process hearings must be carried out at a time and place that is reasonably convenient to the parents. The Early Intervention Division ensures that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing is completed and a written decision mailed to each of the parties. A hearing officer may grant specific extensions of time at the request of either party.

Civil Action (§ 303.438)

Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.

Contact Information

If there are questions about family rights, early intervention operational standards or about how to file a complaint, request mediation, or due process hearing contact your Service Coordinator, Program Director, the Early Intervention Division, or find information on our website (<https://www.mass.gov/orgs/early-intervention-division>).

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