

COMMONWEALTH OF VIRGINIA



Notice of Child and Family Rights and Safeguards in the



**Infant & Toddler
Connection of Virginia**

Virginia's Part C Early Intervention System

July 2010

Introduction

The Individuals with Disabilities Education Act (IDEA) is a federal law which includes provisions for early intervention services for eligible infants and toddlers (ages 0-36 months) with disabilities and their families. These provisions form Part C of IDEA and are articulated in federal regulations (34 CFR Part 303) and in State law (Virginia Code § 2.2-5300 et seq.).

In Virginia, the Part C system is called Infant & Toddler Connection of Virginia. The system is designed to maximize family involvement and ensure parental consent in each step of the early intervention process, beginning with determination of eligibility and continuing through service delivery and transition.

Infant & Toddler Connection of Virginia includes rights and safeguards to protect parents and children. Parents must be informed about these rights and safeguards in Infant & Toddler Connection of Virginia so that they can have a leadership role in the services provided to their family. Notice of Child and Family Rights and Safeguards in the Infant & Toddler Connection of Virginia Part C Early Intervention System is an official notice of the rights and safeguards of children and families as defined under federal Part C regulations.

Information about child and family rights and safeguards are provided to families through local lead agencies, which are responsible for Part C early intervention services at the community level. Specifically, this information is provided by local agencies and providers that participate in Infant & Toddler Connection of Virginia, (referenced herein as "local participating agencies/providers").

☞ Service coordinators working with families can suggest additional materials to help families understand their safeguards under Part C. They can also suggest ways that you and other family members can be partners with professionals to help meet the developmental needs of your child.

Within the Infant & Toddler Connection of Virginia Part C Early Intervention System, you, as a parent, have the following rights and safeguards:

- The opportunity for a multidisciplinary evaluation for eligibility determination and assessment and the development of an Individualized Family Service Plan (IFSP) within forty-five (45) calendar days from referral;
- If eligible under Part C, the opportunity to receive appropriate early intervention services¹ for your child and family as addressed in an IFSP;
- The opportunity to receive evaluation for eligibility determination, assessment, IFSP development, service coordination, and procedural safeguards at no cost. You may, however, be charged for other early intervention services based on your ability to pay as determined using ability to pay mechanisms outlined in the document Facts About Family Cost Share. Inability to pay will not prevent your child or your family from receiving early intervention services;

¹ In Virginia, "appropriate early intervention services" are determined through the IFSP process. The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in the IFSP. Federal regulations define early intervention services as services that "are designed to meet the developmental needs of each child eligible under Part C and the needs of the family related to enhancing the child's development."

- The right to refuse evaluations for eligibility determination, assessments, and services;
- The right to be invited to and participate in all meetings in which a decision is expected to be made regarding a proposal to change the identification, evaluation, or placement of your child, or the provision of services to your child or family;
- The right to receive written timely notice before a change is proposed or refused in the identification, evaluation, or placement of your child, or in the provision of services to your child or family;
- The opportunity to receive each early intervention service in natural environments to the extent appropriate to meet your child's developmental needs;
- The right to maintenance of the confidentiality of personally-identifiable information;
- The right to review and, if appropriate, correct records;
- The right to request mediation and/or impartial due process procedures to resolve parent/provider disagreements; and
- The opportunity to file an administrative complaint.

In addition to the rights and safeguards noted above, you are entitled to be notified of specific procedural safeguards under Part C. These rights are described below.

A. Written Prior Notice

Written prior notice must be given to you within a reasonable time (five [5] calendar days) before a local participating agency/provider proposes or refuses to

initiate or change the identification, evaluation, or placement of your child, or the provision of appropriate early intervention services to your child and your family. The notice must be sufficiently detailed to inform you about:

1. The action that is being proposed or refused;
2. The reasons for taking the action;
3. All procedural safeguards that are available under Part C; and
4. The state's complaint procedures, including a description of how to file a complaint and the timelines for those procedures.


The notice must be:

1. Written in language understandable to the general public and provided in your native language unless clearly not feasible to do so;
2. If your native language or other mode of communication is not a written language, the local participating agency/provider shall take steps to insure that:
 - The notice is translated orally or by other means to you in your native language or other mode of communication;
 - You understand the notice;
 - There is written evidence that the requirements of this section have been met; and
 - If you are deaf, blind, unable to read, or have no written language, the mode of communication must be that normally used by you (such as sign language, Braille, or oral communication).

B. Parental Consent

Consent means that:

1. You are fully informed of all information about the activity(s) for which consent is sought. This information is provided in your native language or other appropriate mode of communication, unless clearly not feasible to do so;

 Native Language, when used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of an eligible child.

2. You understand and agree in writing to the carrying out of the activity(s) for which your consent is sought, and the consent describes the activity(s) and lists the records (if any) that will be released and to whom; and
3. You understand that the granting of consent is voluntary on your part and may be revoked at any time.

Your written consent must be obtained before any screening, the initial evaluation to determine eligibility and assessment of your child are conducted. If you do not give consent for initial evaluation to determine eligibility, the local participating agency/provider may:

1. Provide you with relevant literature or other materials;
2. Offer you peer counseling to help your understanding of the value of early intervention and to address your concerns about participation in Infant & Toddler Connection of Virginia;
3. Periodically renew contact with you, on an established time schedule, to see if you have changed your mind about the desirability of recommended procedures or services; and

4. Initiate an impartial due process hearing for resolving parent/provider disagreements.


Your written consent must also be obtained before early intervention services are provided. If you do not consent, the local participating agency/provider shall make reasonable efforts to ensure that you:

1. Are fully aware of the nature of the services that would be available; and
2. Understand that your child will not be able to receive the early intervention services unless consent is given.

In addition, as the parent of a child eligible under Part C, you may determine whether your child or other family members will accept or refuse any early intervention service(s) under this program. You may also refuse such a service after first accepting it without jeopardizing other early intervention services under this program.

Finally, you have the right to written notice of and written consent to the exchange of any personally-identifiable information collected, used, or maintained under Part C, consistent with Federal and State law.

C. Records

 The following definitions are used in this section: (1) "Destruction/ destroy" means physical destruction or removal of personal identifiers from information that is no longer personally identifiable; (2) "Education record(s)" or "record(s)" means the records covered by Family Education Rights and Privacy Act (FERPA); and (3) "Participating agency" means any agency or institution which collects, maintains, or uses personally-identifiable information, or from which information is obtained, under Part C.

1. Examination of Records

In accordance with the Confidentiality of Information procedures outlined in the next section of this pamphlet, you must be given the opportunity to inspect and review records relating to screening, evaluations for eligibility determination, assessments, development and implementation of IFSPs, individual complaints concerning your child, and any other portion of the Part C program involving records about your child and your family.

Each local participating agency/provider must give you the opportunity to inspect and review any records relating to your child, which are collected, maintained or used by the agency or provider under Part C. The local participating agency/provider must comply with a request without unnecessary delay and before any meeting regarding an IFSP or hearing relating to identification, evaluation, placement, or provision of services for your child and family and, in no case, more than forty-five (45) calendar days after the request has been made.

The opportunity to inspect and review records includes:

- a. A response from the local participating agency/provider to reasonable requests for explanations and interpretations of the record;
- b. The opportunity to request that the local participating agency/ provider provide records containing the information if failure to provide those copies would effectively prevent you from exercising the opportunity to inspect and review the records; and
- c. Having someone who is representing you inspect and review the record.

A local participating agency/provider may presume that you have the authority to inspect and review records relating to your

child unless the agency or provider has been advised that you do not have the authority under applicable Virginia law.

Each local participating agency/provider shall keep a written record of parties obtaining access to records collected, obtained, or used under Part C (except access by parents and authorized employees of such agency or provider), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the child's record.

If any record includes information on more than one child, you may inspect and review only the information relating to your child, or to be informed of that specific information.

Each local participating agency/provider shall provide you, upon request, a list of the types and locations of records collected, maintained, or used by the agency or provider. A local participating agency/provider may charge a fee for copies of records which are made for parents under Part C if the fee does not effectively prevent you from exercising your opportunity to inspect and review those records. However, they may not charge a fee to search for or to retrieve information under Part C.

If you believe that information in records collected, maintained, or used under Part C is inaccurate or misleading, or violates the privacy or other rights of your child or family, you may request the local participating agency/provider which maintains the information to amend the information.

- a. Such agency or provider must decide whether to amend the information in accordance with the request within a reasonable period of time after it receives the request.
- b. If such agency or provider refuses to amend the information as you request, you must be informed of the refusal and be advised of the right to a hearing.

The local participating agency/provider, on request, must provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

- a. If, as a result of the hearing, such agency or provider decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and must inform you in writing.
- b. If, as a result of the hearing, such agency or provider decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, you must be informed of your right to place in the records of your child, a statement commenting on the information, and setting forth any reasons for disagreeing with the decision of the agency or provider.

Any explanation placed in the records of your child under this section must:

- a. Be maintained by the local participating agency/provider as part of the records of your child as long as the record or contested portion (that part of the record with which you disagree) is maintained by such agency or provider; and
- b. If the records of your child or the contested portion are disclosed by such agency or provider to any party, the explanation must also be disclosed to the party.

A hearing held under this section must be conducted according to the procedures under the Family Education Rights & Privacy Act (FERPA), which is found in statute at 20 U.S.C. §1232g, and in federal regulations at 34 CFR Part 99.

2. Confidentiality of Information

Parental consent must be obtained before personally-identifiable information is:

- a. Disclosed to anyone other than officials of the agency/provider in collecting or using information under Part C, unless authorized to do so under FERPA (34 CFR 99.30); or
- b. Used for any purpose other than meeting a requirement under Part C. (34 CFR 300.571)

Information from your child's early intervention record cannot be released to local service providers without your consent unless the agency or provider is authorized to do so under FERPA. If you refuse to provide consent, the local participating agency/provider may initiate due process procedures for resolving this disagreement.

The following safeguards must be in place to ensure confidentiality of records:

- Each local participating agency/provider must protect the confidentiality of personally-identifiable information at collection, storage, disclosure, and destruction stages;
- One official of each local participating agency/provider is responsible for insuring the confidentiality of any personally-identifiable information;
- All persons collecting or using personally-identifiable information must receive training or instruction regarding Virginia's Part C policies, procedures and practices which comply with IDEA and FERPA;
- Each local participating agency/provider must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally-identifiable information;

- The local participating agency/provider must inform parents when personally-identifiable information collected, maintained, or used under Part C is no longer needed to provide services to the child; and the information must be destroyed, at the request of the parents. (Permanent records of your child's name, address, and phone number may be maintained.)

D. Resolving Disputes

If you disagree with a local participating agency/provider on the identification, evaluation, placement of your child, or provision of appropriate early intervention services to your child or family, you may request a timely administrative resolution of your concerns.

Virginia offers three (3) methods for resolving disputes, all of which are available at no cost to families: mediation, impartial due process hearings, and administrative complaints. The following is an overview of these three options. For information on how to file a request for mediation and/or an impartial due process hearing or to file an administrative complaint, see Contact Information on page 10.

1. Mediation

Mediation is voluntary and freely agreed to by both parties. Any party may request mediation although neither parents nor providers are required to use it. Mediation provides an opportunity for parents and providers to resolve their disagreements (e.g., individual child complaints) in a non-adversarial, informal manner. Mediation must be completed in fifteen (15) calendar days following receipt by the State Lead Agency of a request for mediation and may not be used to deny or delay your rights to

an impartial due process hearing or to deny any of your other rights under Part C.

About Mediators and Hearing Officers...

Mediators used in mediation (and hearing officers used in due process hearings, as described in the next section), must be "impartial." Impartial means that the person appointed to serve as a mediator (or hearing officer of the due process proceeding)—

(1) Is not an employee of any agency or program involved in providing early intervention services or care of the child; and

(2) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

A person who otherwise qualifies under this section is not an employee of an agency or program solely because the person is paid by the agency or program to implement the disagreement resolution process.

The State Lead Agency will contact both parties (i.e., you and the provider) to review the complaint and the mediation process, and to schedule a time and location for the mediation. The mediation will be scheduled in a timely manner and held in a location that is convenient to both parties. A qualified and impartial mediator who is trained in effective mediation techniques will meet with both parties to help them find a solution to the complaint in an informal, non-adversarial atmosphere. The State Lead Agency maintains a list of qualified mediators who are knowledgeable of the laws and regulations relating to the provision of early intervention services for infants and toddlers with disabilities and their families.

Both parties must sign the mediation agreement and parties are given a copy of the written agreement at the end of the mediation. Discussions that occur during the

mediation process must be confidential and may not be used as evidence in any subsequent impartial due process hearings or civil proceedings, and the parties to the mediation may be required to sign a confidentiality pledge prior to the beginning of the process. Mediation does not preclude you from requesting an impartial due process hearing at any time. If mediation is unsuccessful, you may want to request a due process hearing.

2. Impartial Due Process Hearings

An impartial due process hearing is a formal procedure conducted by an impartial hearing officer and is the second alternative for families seeking to resolve a dispute. Families seeking an impartial due process hearing must submit their request in writing directly to the State Lead Agency. The impartial due process hearing must be completed, and a written decision made, within thirty (30) calendar days of the receipt of the request. (Mediation, if attempted, must occur within the same 30 days.)

Hearing officers are appointed to conduct due process hearings. Hearing officers must:

- a. Have knowledge about the provisions of Part C and the needs of, and services available for, eligible children and their families; and
- b. Perform the following duties:
 - Listen to the presentation of relevant views about the complaint/ disagreement, examine all information relevant to the issues, and seek to reach a timely resolution of the disagreement;
 - Provide a record of the proceedings at the cost of the state, including a written decision (hearing only).

Under Part C, you are given the rights listed below in any impartial due process hearing carried out under this section.

- a. To be accompanied and advised by a lawyer (at your expense) and by individuals with special knowledge or training about early intervention services for children eligible under Part C;
- b. To present evidence and confront, cross examine, and to compel the attendance of witnesses;
- c. To prohibit the introduction of any evidence at the proceedings that has not been disclosed to you at least five calendar days before the proceeding;
- d. To obtain a written or electronic verbatim (word by word) transcription of the proceeding; and
- e. To obtain written findings of fact and decisions.

The impartial due process hearing described in this section must be carried out at a time and place that is reasonably convenient to you.

No later than thirty (30) calendar days after the State Lead Agency receives your disagreement (complaint), the impartial due process proceeding required under this section must be completed and a written decision must be mailed to each of the parties. Any party not satisfied with the findings and decision of the impartial due process hearing has the right to bring a civil action in state or federal court. During the pendency (time period) of any proceeding involving a parent/provider disagreement (complaint), unless the local participating agency/provider and you otherwise agree, your child and family will continue to receive the appropriate early intervention services currently being provided.

If the disagreement (complaint) between you and the provider involves an application for

initial services, your child and family must be provided those services that are not in dispute.

3. Administrative Complaints

An individual or organization including those from another state may file a written signed complaint that any local participating agency/provider is violating a requirement of the Part C program. Infant & Toddler Connection of Virginia widely disseminates the State's complaint procedures to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities. The complaint must include a statement that a requirement of Part C has been violated and a statement of the facts on which the complaint is based.

Administrative complaints must be filed and received by the State Lead Agency within one (1) year of the alleged violation. Under certain circumstances, the period for filing the complaint may be longer:

- a. If the violation is still occurring for that child or other children; and/or
- b. If the person filing the complaint is requesting reimbursement or corrective action for a violation that occurred within three (3) years of filing the complaint.

Once the State Lead Agency has received the complaint, it has sixty (60) calendar days (unless exceptional circumstances exist) to:

- a. Investigate the complaint, including conducting an independent, on-site investigation, if necessary;
- b. Make an independent determination as to whether or not a violation has occurred after reviewing all relevant information; and
- c. Issue a written decision to the complainant that addresses each

allegation in the complaint and that contains the facts and conclusions as well as the reasons for the final decision.

The individual or organization filing the complaint has the opportunity to submit additional information, either orally or in writing, about the complaint. If the final decision indicates that appropriate services were/are not being provided, the State Lead Agency must address how to remediate the denial of those services including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family. This must include procedures for effective implementation of the decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

The State Lead Agency must also address appropriate future provision of services for all infants and toddlers with disabilities and their families.

No part of any complaint that is also currently being addressed in an impartial due process hearing can be dealt with as an administrative complaint within this process until the conclusion of the hearing. Complaints that have already been decided in an impartial due process hearing involving the same parties cannot be considered under this procedure. The State must notify the complainant that the hearing decision is binding. However, the State Lead Agency must address complaints that are filed related to implementation of an impartial due process hearing decision.

Individual Right to Appeal (For Medicaid Recipients Only)

State and Federal laws require that written notification be provided to individuals when the Department of Medical Assistance or any of its contractors takes an action that affects the individual's receipt of services. Appeals

must be requested in writing and postmarked within 30 days of receipt of the notice of the adverse action. Please see section G of this document for detailed information about the Individual Right to Appeal.

E. Surrogate Parents

The rights of children eligible under Part C are protected even if:

1. No parent can be identified;
2. The local participating agency/provider, after reasonable efforts, cannot locate a parent;
3. The child is a ward of Virginia under the laws of the Commonwealth. Legal custody of the child and all parental rights and responsibilities for the care and custody of the child have been terminated by Court order or permanent entrustment agreement pursuant to applicable law

An individual is assigned to act as a "surrogate" for the parent according to the procedures that follow. The procedures include a method for determining whether a child needs a surrogate parent and assigning a surrogate to the child. The following criteria are employed when selecting surrogates:

1. Surrogate parents are selected at the local level in the manner allowable under Virginia law; and
2. A person selected as a surrogate parent:
 - Has no interest that conflicts with the interest of the child he or she represents;
 - Has knowledge and skills that ensure adequate representation of the child;
 - Is not an employee of any state agency or a person or an employee of

any person providing early intervention services to the child or to any family member of the child. A person who otherwise qualifies to be a surrogate parent under this section is not an employee solely because he or she is paid by a local participating agency/ provider to serve as a surrogate parent; and

- Resides in the same general geographic area as the child, whenever possible.

A surrogate parent may represent the child in all matters relating to:

1. The evaluation for eligibility determination and assessment of the child;
2. Development and implementation of the child's IFSP, including annual evaluations and periodic reviews;
3. The ongoing provision of early intervention services to the child; and
4. Any other rights established under Part C.

F. Contact Information

The State Lead Agency for the Infant & Toddler Connection of Virginia Part C Early Intervention System is the Department of Behavioral Health and Developmental Services (DBHDS). To file an individual child complaint, or to file an administrative complaint, or to find out more about complaint procedures in Virginia, including resolution of disputes through mediation and/or impartial due process hearings contact the State Lead Agency at:

DBHDS
Infant & Toddler Connection of Virginia
1220 Bank Street, 9th Floor
P.O. Box 1797
Richmond, VA 23218-1797

Direct phone # - (804) 786-3710

Fax - (804) 371-7959 or
(804) 771-5877 (TDD/TTY)

or

If you prefer to make a toll free call, you may call 1-800-234-1448 to reach the Central Directory. Your name and contact information will be shared with Infant & Toddler Connection of Virginia Office and a staff member will contact you.

G. Individual Right to Appeal (For Medicaid Recipients Only)

The Code of Federal Regulations at 42 CFR §431 *et seq.*, and the Virginia Administrative Code at 12VAC30-110-10 through 370, require that written notification be provided to individuals when DMAS or any of its contractors takes an action that affects the individual's receipt of services. Most adverse actions may be appealed by the Medicaid client or by an authorized representative on behalf of the client. Adverse actions include partial approvals, denials, reductions in service, suspensions, and terminations. Also, failure to act on a request for services within required timeframes may be appealed.

Appealable actions include disagreement about:

- your child's eligibility for Part C services;
- the development of an Individualized Family Service Plan within 45-calendar days from the date of referral to the Part C early intervention system,
- the provision of early intervention services including the services listed on an Individualized Family Service Plan (IFSP); and
- the frequency and intensity of these services.

For individuals who do not understand English, a translation of appeal rights that can be understood by the individual will be provided upon request.

If an appeal is filed before the effective date of a suspension, reduction, or termination, the level and scope of services previously received may continue during the appeal process. However, if the agency's action is upheld by the hearing officer, the client will be expected to repay DMAS for all services received during the appeal period. For this reason, the client may choose not to receive continued services. The provider will be notified by DMAS to reinstate services if continuation of services is applicable. If coverage is continued or reinstated due to an appeal, the provider may not suspend, reduce or terminate services until a decision is rendered by the hearing officer.

Appeals must be requested in writing and postmarked within 30 days of receipt of the notice of adverse action. The client or his authorized representative may write a letter or complete an Appeal Request Form. Forms are available from your Service Coordinator, on the internet at www.dmas.virginia.gov, at the Infant & Toddler Connection of Virginia's website at www.infantva.org, from the Part C Procedural Safeguard Specialist at (804)786-3710, or by calling (804) 371-8488.

When completing the request for an appeal, be specific about what you want reviewed, and include a copy of the notice about the action that you disagree with.

The appeal request must be signed and mailed or faxed to the:

Appeals Division
Department of Medical Assistance
Services
600 E. Broad Street, 11th floor
Richmond, Virginia 23219
FAX: (804) 371-8491

More information about the appeals process is available on the internet at www.dmas.virginia.gov, at www.infantva.org, or from your Part C Procedural Safeguard Specialist at (804)786-3710.

H. Glossary

Assessment – The ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under Part C to identify—

- (1) The child's unique strengths and needs and the services appropriate to meet those needs; and
- (2) The resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability.

Disclosure – To permit access to or the release, transfer, or other communication of personally-identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

Evaluation – The procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under Part C, consistent with the definition of "infants and toddlers with disabilities" in 34 CFR 303.16.

Family – Defined according to each family's definition of itself.

Family Assessment – Family assessments must be family-directed and designed to determine the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

IFSP – Individualized Family Service Plan (IFSP), a written plan for providing early intervention services to eligible children/families that:

- (1) Is developed jointly by the family and appropriate, qualified personnel providing early intervention services;
- (2) Is based on the multidisciplinary evaluation for eligibility determination and assessment of the child and the assessment of the strengths and needs

of the child's family, as determined by the family and as required in 34 CFR 303.322; and

- (3) Includes services necessary to meet the unique needs of the child and family, and the other components listed under 34 CFR 303.344.

Mediation – A voluntary process freely agreed to by parents and providers to attempt to resolve Part C disagreements. Neither party is required to participate in the mediation process, and both parties must approve any agreement reached. Mediation may not be used to deny or delay your right to an impartial hearing or any of your other rights under Part C.

Multidisciplinary – The involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation for eligibility determination and assessment activities in 34 CFR 303.322 and development of the IFSP in 34 CFR 303.342 - 303.345.

Natural Environment – Settings that are natural or normal for your child's age peers who do not have a disability.

Parent – Includes:

- (1) a natural, adoptive or foster parent of a child;
- (2) a guardian (but not the State if the child is a ward of the State);
- (3) a person acting in the place of a natural or adoptive parent (such as a grandparent or stepparent) with whom the child lives, or a person who is legally responsible for the child's welfare);
- (4) a surrogate parent who has been assigned in accordance with Part C regulations 34 CFR 303.406.

Local System/Provider Label (w/phone number)