

## X. PROCEDURAL SAFEGUARDS

The Part C system in Virginia is designed with the intent of maximizing family involvement in each step of the service delivery process. Ensuring that parents maintain a leadership role in services to their child offers the opportunity for parents to be informed about the rights and procedural safeguards which have been established to protect them and their child. Procedural safeguards, as presented in this document, are divided into four primary areas: A - Protection of the Rights of the Child and Parents; B - Impartial Procedures for Resolution of Parent/Provider Disagreements (Individual Child Complaints); C - Confidentiality; and D - Surrogate Parents.

Below is a summary of the general rights which underlie the Part C processes in Virginia and which are presented in the sections which follow. Parents are informed of:

1. the right to a timely, multidisciplinary evaluation and assessment;
2. the right, if eligible under Part C, to appropriate early intervention services for their child and family;
3. the right to refuse evaluations, assessments, and services;
4. the right to receive written prior notice provided in the parents' native language (unless clearly not feasible to do so) before a change is made or refused in the identification, evaluation, or placement of the child, or in the provision of appropriate early intervention services to the child or family;
5. the right to maintenance of the confidentiality of personally identifiable information;
6. the right to inspect, review and, if appropriate, correct records relating to screening, evaluations and assessments, eligibility determination, the development and implementation of the IFSP, individual complaints dealing with the child, and any other area under this part involving records about the child and the child's family;
7. the right to be invited to, and to attend 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 the child, or the provision of appropriate early intervention services to the child or family;
8. the right to the timely administrative resolution of complaints;
9. the right to use mediation to resolve complaints;
10. the right to use administrative and judicial processes to resolve family-provider disagreements, individual complaints dealing with the child, and any other areas under Part C involving records about the child and the child's family; and
11. the right to receive services in the child's natural environment unless early intervention cannot be achieved satisfactorily in the natural environment.

A. Protection of the Rights of the Child and Parents

## 1. POLICIES

- a. The *Lead Agency* (DMHMRSAS) has *established* policies and procedures for *procedural safeguards that meet the requirements of Part C*. The *Lead Agency ensures effective implementation of the safeguards by each public agency and/or other participating agency/provider that is involved in the provision of early intervention services under Part C*. (34 CFR 303.400(a)-(b))
- b. The following definitions apply to this section:
- (1) "*Consent*" means that:
    - (a) *The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;*
    - (b) *The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom;*
    - (c) *The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and* (34 CFR 303.401(a))
    - (d) *The parent has the right to determine whether he/she, their child or other family members will accept or decline any early intervention service under this part in accordance with state policies, and may decline such a service after first accepting it, without jeopardizing other early intervention services under this part.* (34 CFR 303.405)
  - (2) "*Native language*" where used with reference to persons of limited English proficiency means the language or mode of communication normally used by the parent of a child eligible under Part C.
  - (3) "*Personally identifiable*" means that information includes:
    - (a) *The name of the child, the child's parent, or other family member;*
    - (b) *The address of the child;*
    - (c) *A personal identifier, such as the child's or parent's social security number; or*
    - (d) *A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.* (34 CFR 303.401(c))
- c. The *Lead Agency* ensures that *in accordance with confidentiality procedures in the regulations under Part B of the Act [§300.560 through 300.576], the parents of a child eligible under Part C are afforded the opportunity to examine, inspect and review records related to:*
- (1) *Evaluations and assessments;*
  - (2) *Eligibility determination;*
  - (3) *Development and implementation of IFSPs;*
  - (4) *Parent/provider disagreements (individual complaints) dealing with the child; and*
  - (5) *Any other area under Part C involving records about the child and the child's family.*
- (34 CFR 303.402)
- d. The *Lead Agency* ensures that *written prior notice must be given to the parents of a child eligible under Part C a reasonable time before a public agency and/or other participating agency/provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.* (34 CFR 303.403(a))
- e. The *Lead Agency* ensures that the content of the notice must be in sufficient detail to

*inform the parents about:*

- (1) *The action proposed or refused;*
  - (2) *The reasons for taking the action; and*
  - (3) *All procedural safeguards that are available under Sec.303.401-303.460 of this part*  
(34 CFR 303.403(b))
- f. The Lead Agency ensures that the *notice* is:
- (1) *Written in language understandable to the general public; and*
  - (2) *Provided in the native language of the parents, unless it is clearly not feasible to do so.*  
(34 CFR 3003(c)(1))
- g. The Lead Agency ensures that, *if the native language or other mode of communication of the parent is not a written language, the public agency and/or other participating agency/provider, or designated service provider, is responsible for taking steps to ensure that:*
- (1) *The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;*
  - (2) *The parent understands the notice; and*
  - (3) *There is written evidence that the requirements of this paragraph have been met.*  
(34 CFR 303.403(c)(2))
- h. The Lead Agency ensures that *if a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille, or oral communication).* (34 CFR 303.403(c)(3))

NOTE: Prior notice information in 34 CFR 303.403 is included in Component VII - Individualized Family Service Plans.

- i. The Lead Agency ensures that *written parental consent* is *obtained before:*
- (1) *Conducting the initial evaluation and assessment of a child under §303.322; and*
  - (2) *Initiating the provision of early intervention services.* (34 CFR 303.404(a))

NOTE: Signature on the initial Individualized Family Service Plan (IFSP) meets this requirement.

- j. The Lead Agency ensures that *if consent is not given, the local participating agency* is responsible for making *reasonable efforts to ensure that the parent:*
- (1) *Is fully aware of the nature of the evaluation and assessment or the services that are available; and*
  - (2) *Understands that the child is not able to receive the evaluation and assessment or services unless consent is given.*  
(34 CFR 303.404(b))
- k. If consent for initial evaluation is not given, the local participating agency may encourage parents by:
- (1) Providing parents relevant literature or other materials;
  - (2) Offering parents peer counseling to enhance their understanding of the value of early intervention and to allay their concerns about participation in Part C programs; and
  - (3) Periodically renewing contact with parents to determine if they have changed their minds concerning the desirability of recommended procedures or services.
- l. The Lead Agency ensures that if consent is not given for the initial evaluation, the local participating agency *may initiate procedures to challenge a parent's refusal to consent; and, if successful, obtain the evaluation.* The procedures may include impartial due process procedures. (34 CFR 303.404, Note 2)
- m. The Lead Agency ensures that *the parents of a child eligible under this part may determine whether they, their child, or other family members will accept or decline*

*any early intervention service under this part in accordance with State policies, and may decline such a service after first accepting it, without jeopardizing other early intervention services under Part C.* (34 CFR 303.405)

## 2. PROCEDURES

- a. Local interagency coordinating councils (LICCs) and local participating agencies develop and implement policies and procedures (including mechanisms) for implementing the safeguards as listed in the policies above.
- b. At the point of entry, the temporary service coordinator provides families with an official notice of parent rights and a safeguards notification form in the family's native language unless it is clearly not feasible to do so.
- c. The temporary service coordinator is responsible for securing parent consent before the initial evaluation and assessment is conducted.
- d. LICCs and local participating agencies develop and implement policies and procedures (including mechanisms) for periodically contacting parents who have not given consent for an initial evaluation to determine if they have changed their minds and to provide literature and offer peer counseling.
- e. The service coordinator is responsible for ensuring that families receive written prior notice in the parent's native language, unless clearly not feasible to do so, or other mode of communication before a change is proposed in the identification, evaluation, or placement of the child or the provision of appropriate early intervention services to the child and the child's family.
- f. The temporary service coordinator/service coordinator is responsible for ensuring that parents are invited to participate in all meetings in which a decision is expected to be made regarding a proposal to change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child or family.

### B. Impartial Procedures for Resolution of Family-Provider Disagreements (Individual Child Complaints)

#### 1. POLICIES

- a. The Lead Agency ensures that impartial *procedures* delineated in this section are followed *for the timely administrative resolution of parent/provider disagreements (individual child complaints) concerning any of the matters in §303.403(a) (A.1.d. above).* (34 CFR 303.420)

NOTE: This procedure for the resolution of a family-provider disagreement should not be confused with the administrative complaint procedures under Component XII - Lead Agency Procedures for Resolving Complaints.

- b. The Lead Agency ensures that procedures are established and implemented to allow parties involved in an individual child complaint to resolve such disputes through a mediation process. Only parents may request mediation.
- c. The Lead Agency ensures that mediation is viewed as *voluntary and freely agreed to by both parties. Mediation may not be used to deny or delay a parent's rights to a due process hearing or to deny any other rights under Part C. Mediation is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute. Discussions that occur during the mediation process must be*

*confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process are required to sign a confidentiality pledge prior to the commencement of the process. Regardless of whether or not mediation is used, the complaint must be resolved, and a written decision made, within the 30-day timeline in §303.423. (34 CFR 303.419)*

NOTE: The Lead Agency maintains lists of qualified hearing officers and mediators.

- d. The Lead Agency ensures that hearing officers are impartial, which means that the person appointed to serve as the hearing officer of the due process proceeding to implement the complaint resolution process:
- (1) *Is not an employee of any agency or other entity involved in the provision of 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 paragraph (2) of this section is not an employee of an agency solely because the person is paid by the agency to implement the disagreement resolution process. (34 CFR 303.421(b))*
- (3) *The impartial person appointed to implement the parent/provider disagreement (complaint resolution) process must have knowledge about the provisions of Part C, and the needs of, and services available for, eligible children and their families.*
  - (4) Hearing officers perform the following duties:
    - (a) *Listen to the presentation of relevant viewpoints about the (complaint) disagreement, examine all information relevant to the issues, and seek to reach a timely resolution of the disagreement; and*
    - (b) *Provide a record of the proceedings, including a written decision.* (34 CFR 303.421(a))
- e. The Lead Agency ensures that the parents of children eligible under Part C are afforded the rights in (1)-(5) as listed below in any administrative due process proceedings carried out under §303.420. This includes the right to:
- (1) *Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under Part C;*
  - (2) *Present evidence and confront, cross-examine, and to compel the attendance of witnesses;*
  - (3) *Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;*
  - (4) *Obtain a written or electronic verbatim transcription of the proceeding; and*
  - (5) *Obtain written findings of fact and decisions.* (34 CFR 303.422)
- f. The Lead Agency ensures that any proceeding for implementing the disagreement (complaint) resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents. (34 CFR 303.423(a))
- g. The Lead Agency ensures that not later than 30 days after the receipt of a parent's disagreement (complaint), the due process impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties. (34CFR 303.423)

If mediation is agreed to by both parties, within 15 days of such agreement the mediation process shall be completed and the agreement, if any, mailed to the parties. Completion means that the mediation session(s) has occurred and that the parties either have or have

not agreed to a written mediation agreement. Extensions of the 15 days may be granted for good cause. Examples of good cause include injury, illness, or natural disaster. If there is a simultaneous request for mediation and a due process hearing, the extension cannot result in a violation of the 30-day timeline for completion of the complaint process.

- h. *Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.* (34 CFR 303.424)
- i. The Lead Agency ensures that *during the pendency of any proceeding involving a family-provider disagreement (complaint), unless the local participating agency and parents of a child otherwise agree, the child and family continue to receive the appropriate early intervention services currently being provided.*(34 CFR 303.425(a))
- j. The Lead Agency ensures that *if the family-provider disagreement (complaint) involves an application for initial services, the child and family must receive those services that are not in dispute.* (34 CFR 303.425(b))
- k. The Lead Agency ensures that if the family-provider disagreement (complaint) involves initial eligibility to receive services under Part C, the child and family do not receive services under Part C until the eligibility question is resolved.

## 2. PROCEDURES

- a. The service coordinator is responsible for ensuring that when disagreement occurs on matters relating to identification, evaluation, or placement of the child or the provision of appropriate early intervention services under Part C for the child and family, the parent of the child is informed, in writing and verbally, of the three options for resolution.
- b. Every effort is made to resolve issues using informal decision making. If informal decision making is unsuccessful, parents may choose, by checking a form, or by filing a written request, one of the three options:
  - (1) Mediation alone.
  - (2) Mediation and a hearing (within 30 days) simultaneously.
  - (3) Hearing alone (within 30 days).
- c. The request is presented to the Lead Agency. Upon receipt by the Lead Agency of a request for a due process hearing, the 30 day timeline begins. The Lead Agency notifies the local interagency coordinating council about the request. The Lead Agency ensures the appointment of a mediator and/or hearing officer within five (5) days.
- d. Mediation parameters include:
  - (1) The purpose of mediation is to facilitate the resolution of a family-provider disagreement in an informal, non-adversarial atmosphere. It offers an opportunity to resolve differences either prior to entering or during a hearing process.
  - (2) LICCs must establish and implement procedures to appoint a representative to serve on their behalf during mediation.
  - (3) Either party may decline the mediation conference. If the local interagency coordinating council declines the mediation, the parents must be informed as soon as possible (within four days) of this decision and the right to pursue a hearing.
  - (4) The mediation, including a written mediation agreement reflecting agreements reached by the parties to the dispute, must be completed within 15 calendar days of the receipt by the Lead Agency of notice that both parties have agreed to mediation. If resolution is not reached within 15 days, parents must be again informed in writing of the right to a hearing by the Lead Agency.
  - (5) At any time during the mediation process, a request for a due process hearing may be initiated.

- (6) The Lead Agency is responsible for arranging and providing training for mediators. The Lead Agency also is responsible for determining qualifications, selection, payment, and responsibilities of mediators.
- (7) The Lead Agency is responsible for maintaining a list of impartial mediators.
- (8) Mediation may not be used to deny or delay a parent's rights under this part.
- e. Due process hearing parameters include:
  - (1) The Lead Agency arranges for the appointment of an impartial hearing officer within five days following receipt of the request for a hearing by the Lead Agency.
  - (2) The Lead Agency is responsible for maintaining a list of impartial hearing officers according to the impartial regulations in §303.421.
  - (3) The Lead Agency is responsible for ensuring that the hearing is conducted according to guidelines established by the Lead Agency.
  - (4) The Lead Agency is responsible for arranging and providing training for hearing officers. The Lead Agency also is responsible for determining qualifications, selection, payment, and responsibilities of hearing officers.
- f. Costs for resolution of parent/provider disagreements by due process hearing are equally shared by the local interagency coordinating council and the Lead Agency. The costs shared include expenses of the hearing officer (i.e., time, travel, secretarial, postal and telephone expenses), expenses incurred by order of the hearing officer (i.e., independent educational evaluations, deposition or transcript), and expenses for making a record of a hearing (i.e., hearing tapes). The Lead Agency is not liable to the local interagency coordinating council for expenses incurred for witnesses (except where hearing or reviewing officers subpoena witnesses on their own initiative) or for attorney's fees. The Lead Agency shall bear the full cost of the mediation process.
- g. The Lead Agency is responsible for ensuring that the local participating agency and the parent are contacted to check on the implementation of the mediation resolution or the hearing officer's decision.

### C. Confidentiality

#### 1. POLICIES

- a. The Lead Agency ensures that all confidentiality regulations are followed by agencies involved in the provision of early intervention services. *The policies and procedures ensure the protection of any personally identifiable information collected, used, or maintained under this part including the right of parents to written notice of and written consent to exchange of this information consistent with Federal and State law.*

(34 CFR 303.460 (a))
- b. The policies and procedures *meet the requirements in §§300.560 through 300.576, with the modifications specified in §303.5(b):*
  - (1) *Any reference to "State Educational Agency" means the Lead Agency.*
  - (2) *Any reference to "special education, related services, free appropriate public education, free public education, or education" means "early intervention services" under this part.*
  - (3) *Any reference to "participating agency," when used in reference to a local education agency, (LEA) or an intermediate education unit means a local service provider.*
  - (4) *Any reference to §300.128 (Identification, Location and Evaluation of Children with Disabilities) means §§303.164 and 303.321 (Comprehensive Child Find System).*
  - (5) *Any reference to §300.129 (Confidentiality of Personally Identifiable Information)*

- means this section (§ 303.460) (Confidentiality of Information).(34 CFR 303.460(b))*
- c. The following definitions as delineated in §300.560 are used in this section.
    - (1) *"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.*
    - (2) *"Education records" or "records" means the records covered by Family Education Rights and Privacy Act (FERPA).*
    - (3) *"Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, under this part. It is a local service agency.*
  - d. According to §300.561, notice is given which is adequate to fully inform parent(s) about the requirements under § 300.128 of Subpart B, (child find system) including:
    - (1) *A description of the extent to which the notice is given in the native languages of the various population groups in Virginia;*
    - (2) *A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods Virginia intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;*
    - (3) *A summary of the policies and procedures which local service agencies follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and*
    - (4) *A description of all of the rights of parents and children regarding this information, including the rights under section 438 of the General Education Provisions Act and Part 99 of this title (the Family Educational Rights and Privacy Act of 1974, and implementing regulations).*
  - e. *Before any major identification, location, or evaluation activity, the notice is published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout Virginia of the activity.*

Note: Notice information in 300.561 is included in Component VI – Child Find

- f. In accessing rights, according to §300.562, *each local service agency permits parents to inspect and review any records relating to their children which are collected, maintained, or used by the agency under Part C. The agency complies with a request without unnecessary delay and before any meeting regarding an IFSP or hearing relating to the identification, evaluation, or placement of a child, or provision of early intervention services and in no case more than 45 days after the request has been made.*
  - (1) *The right to inspect and review records includes:*
    - (a) *The right to a response from the local service agency to reasonable requests for explanations and interpretations of the record;*
    - (b) *The right to request that the agency provide copies of the 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; and*
    - (c) *The right to have a representative of the parent inspect and review the record.*
  - (2) *According to §300.562, an agency may presume that the parent has the authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.*
- g. According to §300.563, *each local service agency shall keep a record of parties*

*obtaining access to education records collected, obtained, or used under this part (except access by parents and authorized employees of the local service agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.*

- h. According to §300.564, *if any record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.*
- i. According to §300.565, *each local service agency shall provide parents on request a list of the types and locations of records collected, maintained, or used by the agency.*
- j. According to §300.566, *a local service agency may charge a fee for copies of records which 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. A local service agency may not charge a fee to search for or to retrieve information under Part C.*
- k. According to §300.567, *a parent who believes that information in records collected, maintained, or used under Part C is inaccurate or misleading or violates the privacy or other rights of the child or family, may request the local service agency which maintains the information to amend the information.*
  - (1) *The agency decides whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.*
  - (2) *If the agency decides to refuse to amend the information in accordance with the request, it informs the parent of the refusal and advises the parent of the right to a hearing held under §300.568.*
- l. According to §300.568, *the agency, on request, provides an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.*
- m. According to §300.569, *if, as a result of the hearing, the local service agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it amends the information accordingly and so informs the parent in writing.*
  - (1) *If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy (or) other rights of the child, it informs the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.*
  - (2) *Any explanation placed in the records of the child under this section must:*
    - (a) *Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and*
    - (b) *If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.*
- n. According to §300.570, *a hearing held under §300.568 of this subpart must be conducted according to the procedures under §99.22 of Family Education Rights & Privacy Act (FERPA) (34 CFR Part 99).*
- o. According to §300.571, *the following consent regulations are followed:*
  - (1) *Parental consent must be obtained before personally identifiable information is:*
    - (a) *Disclosed to anyone other than officials of local service agencies collecting or using information under Part C, subject to paragraph (b) of this section;*  
*or*
    - (b) *Used for any purpose other than meeting a requirement under Part C.*

- (2) *An agency subject to Part 99 of this title does not release information from records to local service agencies without parental consent unless authorized to do so under FERPA Part 99.31.*
- (3) *The following policies and procedures are used in the event that a parent refuses to provide consent under this section. If consent is not given, the public agency and/or other participating agency/provider may encourage parents by:*
  - (a) *Providing parents relevant literature or other materials;*
  - (b) *Offering parents peer counseling to enhance their understanding of the value of early intervention and to allay their concerns about participation in Part C programs; and*
  - (c) *Periodically renewing contact with parents, on an established time schedule, to determine if they have changed their minds concerning the desirability of recommended procedures or services.*

In the event that a parent refuses to provide consent and the agency decides that the sharing of information is essential, the agency may initiate due process proceedings for resolving the family-provider disagreement.

- p. According to §§300.572 and 300.573:
  - (1) *Each local service agency protects the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages;*
  - (2) *One official of each local service agency assumes responsibility for insuring the confidentiality of any personally identifiable information;*
  - (3) *All persons collecting or using personally identifiable information receive training or instruction regarding Virginia's policies and procedures under 300.129 of Subpart B and Part 99;*
  - (4) *Each local service agency maintains, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information;*
  - (5) *The public agency and/or other participating agency/provider informs parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child; and*
  - (6) *The information is destroyed, at the request of the parents. (Permanent records of child's name, address, phone number, and time period in which they received services may be maintained).*
- q. According to §300.574, the Lead Agency through these policies and procedures, *considers the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.*
- r. According to §300.575, the Lead Agency ensures that the following procedures *for monitoring are used to insure that its policies and procedures are followed and that the requirements of the Act and the Part C regulations in this part are met.*
  - (1) *Regular monitoring through existing processes continues to occur.*
  - (2) *Complaints, disagreements, or concerns are followed up and appropriate actions (including sanctions) are taken.*
  - (3) *Technical assistance is provided to agencies, organizations and providers requesting assistance or clarification.*
  - (4) *Plans to correct deficiencies that are identified through monitoring and technical assistance are developed.*
  - (5) *If deficiencies are not corrected through these above listed procedures, sanctions which may include withdrawal of funds and provision of services through other*

means, are imposed by the state agency heads.

- s. According to §300.576, *if the U.S. Department of Education or its authorized representatives collects any personally identifiable information regarding children eligible under this part which is not subject to the Privacy Act of 1974, the U.S. Secretary of Education shall apply the requirements of the Statute (5 USC section 552A) and the regulations implementing those provisions.*

## 2. PROCEDURES

- a. LICCs develop and implement policies and procedures (including mechanisms) to protect personally identifiable information collected, used, or maintained under Part C according to the policy statements in section C.1. above.
- b. The temporary service coordinator is responsible for ensuring that parents receive a written official notice at the point of entry of parent rights and safeguards, including policies and procedures related to storage, disclosure to third parties, retention, and destruction of personally identifiable information.
- c. The temporary service coordinator/service coordinator and local service providers are responsible for ensuring that no personally identifiable information is disclosed to anyone other than officials of local service agencies or used for any purpose other than meeting a requirement under Part C.
- d. Each local service agency is responsible for:
  - (1) Identifying one individual to assume responsibility for ensuring the confidentiality of any personally identifiable information;
  - (2) Establishing a procedure for parents or a representative of the parent to inspect and review the child's record;
  - (3) Maintaining a record of persons obtaining access to the child's records;
  - (4) Establishing a procedure for responding to a parent request to amend information considered to be inaccurate or misleading or which violates the privacy or other rights of the child or family; and
  - (5) Not charging a fee for copies of records if the fee would effectively prevent the parents from exercising their right to inspect and review those records.

## D. Surrogate Parents

### 1. POLICIES

- a. The Lead Agency ensures *that the rights of children eligible under Part C are protected if:*
  - (1) *No parent as defined in Sec.303.19 can be identified;*
  - (2) *The public agency and/or other participating agency/provider, after reasonable efforts, cannot determine the whereabouts of a parent; or*  
(34 CFR 303.406(a)(1)&(2))
  - (3) *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.*
  - (4) *The child is a ward of Virginia under the laws of the Commonwealth.*  
(34 CFR 303.406(a)(3))

NOTE: Wards of Virginia are children for whom parental rights have been terminated by the court or whose parents have permanently entrusted them to a local department of social services.

NOTE: Children who are suspected of being or are determined to be eligible under this part do not require a surrogate parent if someone is acting in the place of a parent. *The term "parent" has been defined to be a natural or adoptive parent of a child, a guardian, a person acting as a parent (such as a grandparent or step-parent with whom the child lives, or a person who is legally responsible for the child's welfare); or a surrogate parent who has been assigned in accordance with §303.406. Unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part C of the Act if; a) the natural parent(s)' authority to make the decisions required of parents under the Act has been extinguished under State law; and b) the foster parent has an ongoing, long-term relationship with the child; is willing to make the decisions required of parents under the Act; has no interest that would conflict with the interests of the child.*

(34 CFR 303.19(a)(b))

Persons acting in place of the parent may do so with the permission of the parent.

- b. The Lead Agency accepts as its duty ensuring that *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. (34 CFR 303.406(b))
- c. The Lead Agency ensures that the following criteria are employed when selecting surrogates.
  - (1) *Surrogate parents are selected in ways permitted by Virginia law.*
  - (2) *A person selected as a surrogate:*
    - (a) *Has no interest that conflicts with the interest of the child he or she represents;*
    - (b) *Has knowledge and skills that ensure adequate representation of the child;*
    - (c) *Shall not be an employee of the State Lead Agency, or other State agency, and shall not be any person, or any employee of a person, providing early intervention services to the child or 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 public agency and/or other participating agency/provider to serve as a surrogate parent; and* (34 CFR 303.406(c)&(d))
    - (d) *Resides in the same general geographic area as the child, whenever possible.*
- d. The Lead Agency ensures that *a surrogate parent may represent the child in all matters relating to:*
  - (1) *The evaluation and assessment of the child;*
  - (2) *Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;*
  - (3) *The ongoing provision of early intervention services to the child; and*
  - (4) *Any other rights established under this part.* (34 CFR 303.406(e))

## 2. PROCEDURES

- a. LICCs have developed procedures or have coordinated efforts with their respective local education agencies to meet the policies listed above for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child. The local councils determine mechanisms to:
  - (1) Appoint a surrogate parent;
  - (2) The appointment having been effected, notify in writing:

- (a) The surrogate parent-appointee;
  - (b) The person charged with responsibility for the child;
  - (c) The public agency and/or other participating agency/provider charged with responsibility for the child when the child is a ward of Virginia; and
  - (d) The Lead Agency.
- (3) Renew or not renew the appointment of a surrogate parent.
- b. LICCs have developed procedures or have coordinated efforts with respective local education agencies to establish and maintain a list of individuals within their jurisdiction who are qualified to serve as surrogate parents. It may be necessary for local councils to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents. It should be noted, however, that geographic proximity is essential to the surrogate parent/child relationship.

NOTE: Individuals who are not on the list may be eligible to serve as surrogate parents, subject to the LICC's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify are considered in determination of surrogate eligibility. Other factors which warrant attention are as follows:

- (1) Consideration of the appointment of a relative to serve as surrogate parent;
  - (2) Consideration of the appointment of a temporary foster parent, as long as the temporary foster parent has no interests that conflict with the interests of the child, and who has the knowledge and skills to represent the child adequately, and who has received the required training;
  - (3) Consideration of the appointment of a qualified person of the same racial, cultural, and linguistic background as the child who is suspected of having or has been identified as having a disability.
- c. LICCs have established procedures or have coordinated efforts with respective local education agencies which include conditions and methods for changing or terminating the assignment of a surrogate parent before his appointment has expired. The assignment of a surrogate parent may be terminated when one or more of the following circumstances occurs:
- (1) The child is found no longer eligible for services (except when termination of services is being contested);
  - (2) Legal guardianship of the child is transferred to a person who is able to carry out the role of the parent;
  - (3) A parent, who was previously unknown or unavailable, is now known or available; or
  - (4) The appointed surrogate parent is no longer eligible (see "Qualifications for Surrogate Parent").

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