

Family Rights



Notice of Child and Family Rights and Procedural Safeguards

in the Early Intervention Colorado System

Introduction

The Individuals with Disabilities Education Improvement Act (IDEA) is a federal law, which includes provisions for early intervention services for eligible infants and toddlers (birth through two years of age) with disabilities and their families. These provisions form Part C of IDEA and are articulated in federal regulations (34 CFR Part 303).

In Colorado, the overall system of early intervention is known as Early Intervention Colorado (EI Colorado). 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.

Families involved with Colorado's early intervention system have special rights protected by federal law to protect parents and children. Parents must be informed about these rights and procedural safeguards in Early Intervention Colorado so that they can have an active role in the services provided to their family. *Notice of Child and Family Rights and Procedural Safeguards in the Early Intervention Colorado System* is an official notice of the rights and safeguards of children and families as defined under federal IDEA Part C regulations.

Information about child and family rights and safeguards are provided to families through local Community Centered Boards (CCBs) or other appointed participating agency(ies)/providers, which are responsible for early intervention services under federal IDEA Part C at the community level.

Service coordinators working with families can suggest additional materials to help families understand their rights and 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 Early Intervention Colorado, you, as a parent, have the following family rights and procedural safeguards under Part C of the Individuals with Disabilities Education Improvement Act (IDEA):

- The opportunity for a multidisciplinary evaluation and assessment and the development of an Individualized Family Service Plan (IFSP) within forty-five (45) calendar days from referral for evaluation;
- 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, assessment, IFSP development, service coordination, and procedural safeguards at no cost;

¹ In Colorado, "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, assessments, and services including a refusal of some portion of the IFSP 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 early intervention services in natural environments within your family's routines to the maximum extent appropriate to meet your child's developmental needs;
- The right to maintenance of the confidentiality of personally-identifiable information;
- The right to inspect and review and, if appropriate, amend 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 of IDEA. These rights are described below.

A. Written Prior Notice

Written prior notice must be given to you within a reasonable time (ten (10) calendar days) before an agency or local service provider participating in EI Colorado 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 reason(s) for taking the action;
3. All procedural safeguards that are available under the EI Colorado program; and
4. Colorado's complaint procedures, including a description of how to file a complaint and the timelines for those procedures.

The written 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 agency or local service provider participating in EI Colorado 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. Informed 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 unless clearly not feasible to do so, or other appropriate mode of communication;

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 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 the initial evaluation and assessment of your child is conducted. If you do not give consent for initial evaluation, the agency or local service provider participating in El Colorado 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 the Early Intervention Colorado System;
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. In addition, the agency or local service provider participating in El Colorado may initiate dispute resolution procedures through their local agency.

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

1. Are fully aware of the nature of the evaluation and assessment or the services that would be available; and
2. Understand that your child will not be able to receive the evaluation and assessment or 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 Educational 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.

I. 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 evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints concerning your child, and any other portion of the El Colorado program involving records about your child and your family.

Each agency or local service provider participating in El Colorado 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 agency or local service provider participating in El Colorado 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:

1. A response from the agency or local service provider participating in El Colorado to reasonable requests for explanations and interpretations of the record;
2. The opportunity to request that the local participating agency/provider provide copies of records containing the information if failure to provide those copies would effectively prevent you from exercising the right to inspect and review the records; and
3. Having someone who is representing you inspect and review the record with your written consent.

An agency or local service provider participating in El Colorado 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 Colorado law.

Each agency or local service provider participating in EI Colorado shall keep a written record of parties obtaining access to records collected, obtained, or used under EI Colorado (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 agency or local service provider participating in EI Colorado shall provide you, upon request, a list of the types and locations of records collected, maintained, or used by the agency or provider. An agency or local service provider participating in EI Colorado may charge a fee for copies of records which are made for parents under EI Colorado if the fee does not effectively prevent you from exercising your right to inspect and review those records. However, they may not charge a fee to search for or to retrieve information under EI Colorado.

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

1. The 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.
2. If the 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 agency or local service provider participating in EI Colorado, on request, must provide an opportunity for a hearing to challenge information in early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

1. If, as a result of the hearing, the 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.
2. If, as a result of the hearing, the 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:

1. Be maintained by the agency or local service provider participating in EI Colorado 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 the agency or provider; and

2. If the records of your child or the contested portion are disclosed by the 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 Educational Rights & Privacy Act (FERPA), which is found in statute at 20 U.S.C. §1232g, and in federal regulations at 34 CFR Part 99.

II. Confidentiality of Information

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

1. Disclosed to anyone other than officials of participating agencies/service providers in collecting or using information under EI Colorado, unless authorized to do so under FERPA (34 CFR 99.31); or
2. Used for any purpose other than meeting a requirement under EI Colorado. 34 CFR 300.571

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

- Each agency or local service provider participating in EI Colorado must protect the confidentiality of personally-identifiable information at collection, storage, disclosure, and destruction stages;
- One official of each agency or local service provider participating in EI Colorado 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 EI Colorado policies and procedures which comply with IDEA and FERPA;
- Each agency or local service provider participating in EI Colorado 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 agency or local service provider participating in EI Colorado must inform parents when personally-identifiable information collected, maintained, or used under EI Colorado 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, phone number, attendance and year completed may be maintained without time limitations.)

D. Individual Child Complaints (Mediation and Due Process)

If you disagree with an agency or local service provider participating in EI Colorado 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. Such parent/provider disagreements are called **individual child complaints**.

Colorado offers two (2) methods for resolving individual child complaints, both of which are available at no cost to families: mediation and impartial due process hearings. The following is an overview of mediation and impartial due process hearings. For information on how to file a request for mediation and/or an impartial due process hearing, see *F. Contact Information* on page 12 and 13.

I. Mediation

A statewide mediation system is available to ensure that you may voluntarily access a non-adversarial process for the resolution of individual disputes regarding the Early Intervention System. Mediation is available for any type of dispute arising under Part C including any matters prior to the filing of a complaint, in accordance with IDEA, Section 615e. Mediation is voluntary on the part of all parties. The State lead agency identifies individual mediators to provide early intervention mediation services. Mediators are required to undergo training as a condition of serving as mediators. The State lead agency shall maintain a list of qualified and impartial mediators who are trained in effective mediation techniques and are knowledgeable in laws, regulations and policies and procedures related to the provision of early intervention services.

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.

Mediation cannot be used to deny or delay your right to a due process hearing or any other rights afforded under EI Colorado. You can request mediation alone or simultaneously with a request for a due process hearing and may refuse or withdraw from the mediation process at any time. You may also file a request for mediation when filing a complaint.

A request for mediation shall be in writing, signed and dated by you or, with your consent, your representative. If you wish to file a request for mediation, it is the responsibility of the service coordinator and/or the local CCB to assist you, in your native language and/or mode of communication to the maximum extent possible, to prepare the request in written form. If your primary mode of communication is sign language

or Braille, the request can be made utilizing your primary mode of communication.

If any party other than you requests mediation, it may only be initiated with your consent. Once your written consent has been obtained to engage in mediation, evidence of that written consent shall be attached to the request for mediation. The service provider/agency's request that you agree to participate in mediation shall be made in writing in your native language, to the maximum extent possible, and in a manner understandable to you.

The mediation process, including issuance of a written mediation agreement, shall be completed within 30 calendar days of the receipt of the request for mediation unless the mediation was requested at the same time as a due process hearing or complaint investigation. In that case, the mediation must be completed within 15 calendar days to ensure adequate time for completion of the due process proceeding or complaint investigation.

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:

1. States that all discussions that occurred during the mediation process shall remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
2. Is signed by both the parent and a representative of the 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 Part C.

The State must bear the cost of the mediation process, including the costs of meetings described above.

II. 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 file an **Individual Child Complaint**. 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:

1. Have knowledge about the provisions of Part C and the needs of, and services available for, eligible children and their families; and

2. 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.

1. 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;
2. To present evidence and confront, cross examine, and to compel the attendance of witnesses;
3. 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;
4. To obtain a written or electronic verbatim (word by word) transcription of the proceeding; and
5. 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 agency or local service provider participating in El Colorado 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.

III. Administrative Complaints

In addition to the **Individual Child Complaints** process (discussed in the previous section), an individual or organization including those from another state may file a written signed complaint that any agency or local service provider participating in El Colorado is violating a requirement of the Part C of IDEA legislation. El Colorado 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:

1. A statement that a requirement of Part C has been violated
2. A statement of the facts on which the complaint is based;

3. The signature of the individual filing the complaint, or the signature of an individual authorized to act on behalf of an organization.

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:

1. If the alleged violation is still occurring for that child or other children; and/or
2. 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:

1. Investigate the complaint, including conducting an independent, on-site investigation, if necessary;
2. Make an independent determination as to whether or not a violation has occurred after reviewing all relevant information; and
3. 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.

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 state 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 part of the due process action must be resolved within the 60-calendar day timeline using the complaint procedures described above.

If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

1. The hearing decision is binding; and
2. The State lead agency must inform the complainant to that effect.

A complaint alleging a public agency(s) or private service provider(s) failure to implement a due process decision must be resolved through the State lead agency.

Further information on procedures for resolving and/or filing a request for mediation, a due process hearing, or an administrative complaint can

be obtained by contacting the DDD State lead agency Office using the contact information below and on the following page of this document.

E. Surrogate Parents

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

1. No parent can be identified;
2. The agency or local service provider participating in EI Colorado, after reasonable efforts, cannot determine the whereabouts of a parent;
3. The child is a ward of the State under the laws of Colorado.

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 Colorado 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 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 EI Colorado.

F. Contact Information

The State Lead Agency for the Early Intervention Colorado System is the Colorado Department of Human Services, Division for Developmental Disabilities (DDD). To file an individual child complaint, or to file an administrative complaint, or to find out more about complaint procedures in Colorado, including resolution of disputes through mediation and/or impartial due process hearings—contact the State Lead Agency at:

CDHS/DDD

Early Intervention Colorado
4055 S. Lowell Blvd.
Denver, CO 80236

Direct phone: 303-866-7263

Fax: 303-866-7680

or

If you prefer to make a toll free call, you may call 1-888-777-4041 to reach the Central Directory. Your name and contact information will be shared with the Early Intervention Colorado Office and a staff member will contact you.

Community Centered Board Label (with phone number)

G. 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 education records, or the personally-identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.

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, including determining the status of the child in each of the developmental areas. Developmental areas include: Cognitive development, Physical development (including fine motor, gross motor, vision and hearing), Communication development, Social or emotional development or Adaptive development.

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.



Early Intervention Colorado
for Infants, Toddlers & Families

For more information about
Colorado's early intervention system, call

1-888-777-4041

or visit

www.eicolorado.org



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