



The Rights of Infants and Toddlers with Special Needs

Children and their families served by
Tennessee's Early Intervention System
have certain rights

These rights are protected by federal and state laws. They include rules, or Procedural Safeguards, that are intended to protect those rights. This booklet contains the parent's rights that govern this early intervention process for their child with special needs to three in Tennessee.

Technical writing taken directly from federal laws and state regulations is the basis of this publication. Sometimes this language may be difficult to understand. Throughout this booklet, text boxes have been added to define or expand some of the terms. Background information, abbreviations, and definitions have also been included whenever possible.

The Rights of Infants and Toddlers with Special Needs

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The Rights

IDEA stands for The Individuals with Disabilities Education Act, which is the law that requires special services for children with disabilities from birth through the age of twenty-one years. This law has established the regulations on which the procedural safeguards in this booklet are based.

Children and their families served by **Tennessee's Early Intervention System** have certain rights that are protected by federal and state laws. These Procedural Safeguards are the rules that protect your rights.

1. The Right to Informed Parental Consent

Consent means that you are fully informed of all information about the activity for which your permission is sought and in your native language or form of communication. It also means you understand and have agreed in writing to the carrying out of the activity for which your consent is being requested. This consent must describe that activity and lists the records (if any) which will be released and to whom. Your consent is voluntary and may be withdrawn at any time without risking future participation in any early intervention service.

Consent in this case means that as an informed parent, you give your voluntary permission to an early intervention program that will serve your child with special needs.

As a parent, you have the right to give or refuse your consent for the following actions:

- The initial evaluation and assessment of your child;
- The initial placement of your child in an early intervention program(s);
- The sharing of certain information that would make it possible to identify your child to unauthorized persons.

Initial evaluation and assessment are testing tools and procedures used to measure a child's strengths and needs in development. This is also the process used to determine if your child is eligible for special services.

Initial placement is a beginning program of early intervention service.

As a parent, your child's early intervention program must make every reasonable effort to ensure that you are fully aware of the nature of any evaluation, assessment, and early intervention services that would be available to you. As a parent, you must also understand that your child will not be able to receive any early intervention services without your consent for the initial evaluation and placement.

2. The Right to Written Prior Notice

You must be given a written announcement within a reasonable time in advance to any action requiring your consent (as described above). In addition, you must be provided with a written notice within a reasonable period of time before the following actions take place:

Written Prior Notice is the right to receive a written announcement in a way that is clearly understood by you, the parent, in advance of any changes in early intervention services to your child.

- When your child's early intervention program proposes to initiate or change the identification, the evaluation, or the placement of your child or proposes to make any change in the provision of early intervention services to your child;
- When your child's early intervention program refuses to initiate or change the identification, the assessment, or early intervention placement or refuses to make any change that you request in the provision of early intervention services to your child;
- When your child's early intervention program refuses to amend your child's records or proposes to destroy unneeded records in accordance with confidentiality requirements; and
- When your child's early intervention program releases your child's records to another early intervention service provider or state agency.

The Content of Written Prior Notice must be detailed enough to inform you about:

- The action that is being proposed or refused;
- The reason the early intervention program is taking the action;
- All procedural safeguards available to you; and
- Information about the state complaint procedures including a description of how to file a complaint and the time lines under these procedures.

The Written Prior Notice must also:

- Be written in a language understandable to the general public;
- Be provided in your native language, unless it is clearly not feasible to do so;
- Be communicated orally when necessary if your native language or mode of communication is not a written language;
- Be offered in Braille or sign language or another mode of communication so that you, the parent, understand the content of the notice; and
- Contain a written record, which notes that this translation was provided.

3. The Right to Decline Services

You, as a parent, have the right to determine whether you, your child, or other family members will accept or decline any early intervention services. You may decline such a service after first accepting it, without jeopardizing other early intervention services.

4. The Right to a Multidisciplinary Evaluation and an Assessment of your Child

You have the right to a multidisciplinary evaluation of your child to determine eligibility within 45 days of his/her referral to an early intervention program. All tests must be selected and administered without being racially or culturally discriminating. As the parent, you have

the right to participate in this evaluation and all test results must be explained to you. This process of evaluation and assessment provides information for you and early intervention professionals to help in selecting appropriate services for your child with special needs.

Multidisciplinary evaluation is a way of assessing the developmental abilities of a child. These evaluations or tests can determine a child's eligibility for early intervention (EI) services. It involves two or more professionals from different areas of training. These specialists can come from many backgrounds, such as: education, nursing, and speech, physical, and occupational therapies.

5. The Right to Services in a Natural Environment

Your child has the right to early intervention services provided in settings that are natural or normal for your child's age peers who have no disabilities. Early intervention services should be offered in a natural environment, to the maximum extent appropriate, to meet the needs of your child.

A natural environment is any place where children of all abilities live, learn, or play. The everyday activities that make up your family's lifestyle, such as those occurring in your home, school, church, or the neighborhood, may be considered your child's "natural environment".

6. The Right to Review Records

Your child's records are confidential and may only be reviewed by you and other authorized persons, such as: a nurse, a therapist, an early interventionist, involved state agencies, or a doctor.

Records cannot be reviewed by anyone else unless you give your consent.

The Individualized Family Service Plan (IFSP) is a written document of early intervention services for a child with special needs. The IFSP is a joint planning effort between parents and EI specialists. This plan identifies the outcomes that are expected to be achieved for your child and family. The EI services needed to reach these goals are also identified in the IFSP.

Remember:

- **You**, the parent, have the right to see and examine all early intervention records related to your child.
- **You** are allowed the opportunity to inspect and to review records relating to the following:
 - a) Evaluations and assessments,
 - b) Eligibility questions,
 - c) The development and implementation of the Individualized Family Service Plan (IFSP),
 - d) Individual administrative complaints filed on behalf of your child and the investigative report,
 - e) And any other area involving the records about your child and family.
- **You** must be informed of the types and location of early intervention records collected, maintained, or used by any early intervention system. Your child's early intervention program must keep a record of persons obtaining access to your child's records, including name, date, and their purpose for access.
- **You** have the right to ask that any records that you feel are inaccurate or misleading be removed or amended. You also have the right to request a hearing if your child's records are not adjusted as you have requested.
- **You** have the right to review any materials pertaining to your child.

There are three levels of conflict resolution: administrative complaint, mediation, and a due process hearing.

Disagreement Methods

You have the right to disagree with services or with the way services are being provided. As a parent you have the option to request changes and this is done through established procedures. These disagreements can frequently be settled through open discussion between you, the service provider, and your service coordinator. If your disagreement is not resolved to your satisfaction through this informal process, the following options can be pursued.

The **administrative complaint** process involves filling out a complaint form that is sent to the Tennessee Department of Education (TDOE) for assistance in resolving differences.

Mediation is a problem solving process that allows you and the early intervention provider to talk about details of your disagreement with someone who is impartial and has been trained in conflict resolution. Both of these methods are usually successful in working out differences of opinion.

A **due process hearing** is a formal process that allows you and the agencies involved to present all positions before an impartial administrative law judge. A due process hearing is available to you at any time even if you have chosen one of the more informal methods first. All levels of complaint resolution are at no administrative cost to you.

7. The Right to File an Administrative Complaint

Administrative Complaint is a conflict process that is considered informal. You can stop this process at any point when you feel it is no longer helpful.

As a parent, you have the right to file an administrative complaint with the Tennessee Department of Education (TDOE), to the Office of Early Childhood Programs. As a parent, you should register a complaint when you believe that your child's early intervention program has failed to comply with regulations governing the provision of early intervention services. This complaint should include a statement and the facts on which you have based your complaint. If you wish to file a complaint, you may request an administrative complaint form through your child's early intervention program or the TDOE.

The complaint procedures include the following:

Within 60 calendar days after a complaint is filed appropriate involved person/s must:

- Carry out an independent on-site investigation, if it is determined that such an investigation is necessary;

- Have the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of the law;
- Issue a written decision to you that addresses each allegation and contains the following:
 - a) Findings of fact and conclusions and
 - b) The reasons for the final decision.
- Provide procedures for effective implementation of the final decision, if needed, and technical assistance activities, negotiations, and the corrective actions to achieve compliance, which may include remediation for any required service/s which are found to be denied.

8. The Right to Mediation

Families of infants and toddlers with special needs have the right to access the Tennessee Department of Education's (TDOE) system of mediation. Parents, the TDOE, public agencies, and service providers may participate in mediation to resolve disputes regarding the provision of early intervention services to an eligible child or a child suspected of being eligible.

Mediation is an informal process for settling disagreements between parents and early intervention programs. A mediator is an impartial person who is asked to help settle a disagreement.

- Mediation may be requested by the parents, appropriate state agencies, or services providers when:
 - a) A conflict arises regarding the early intervention services of a child that cannot be resolved without third party assistance; or
 - b) The parent requests a due process hearing.
- The mediation process is voluntary. Both the family and the early intervention system must agree to try mediation. A "Request for Mediation" form shall be completed and filed with the Director of the Office of Early Childhood. At any time either party may decide that they want to stop the mediation

process and proceed with a due process hearing.

- The mediation process is confidential. Information shared by either party with the mediator during the mediation will not be given to the other party or anyone else without your permission. Any material gathered or used for mediation can not be used in a due process hearing.
- A trained, impartial mediator who is appointed by the TDOE conducts mediation sessions. The TDOE also provides an appropriate meeting place and covers all the administrative costs.
- Any agreement reached by mediation is included in your child's Individualized Family Service Plan (IFSP). If no agreement is reached, all information from this process is destroyed.

9. The Right to Request an Impartial Due Process Hearing

Due process is a formal procedure designed to protect your rights. It includes requirements for confidentiality, consent, and a system to resolve disagreements.

As a parent, you may request a due process hearing in writing to the Director of the Office of Early Childhood. You must give a brief statement of facts supporting the allegation that the service provider has (or is about to) initiate or change and you do not agree to:

- The evaluation of your child;
- The placement of your child;
- The provision of appropriate early intervention services to your child and family.

An Administrative Law Judge will be appointed by the Office of Early Childhood to conduct the hearing. This person may not be an employee of a public agency that is involved in providing early intervention services. The Administrative Law Judge may not be the care provider of your child or have any personal or professional interest, which would conflict with his/her objectivity in the hearing. (Administrative Law Judges are not considered employees of the state solely because they are paid to serve in this capacity.) The TDOE keeps a list of

Administrative Law Judges, which also includes a statement of their qualifications.

If you request a due process hearing, you have the following rights:

- To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of infants and toddlers with special needs;
- To present evidence and confront, cross-examine, and compel the attendance of witnesses;
- To prohibit the introduction of any evidence at the hearing that has not been disclosed to all others involved at least five days before the hearing;
- To obtain a written or electronic verbatim record of the hearing;
- To obtain written findings of facts and decisions;
- To have your child, who is the subject of the hearing, present at the hearing if you wish; and
- To open the hearing to the public.

You have the right to receive a final decision not later than 45 days after the TDOE receives your request for a hearing. The Administrative Law Judge can grant an extension of the time period at the request of you or anyone directly involved in the due process hearing. A copy of the final decision will be provided to the participants of the hearing. The hearing must be conducted at a time and place convenient to you and your child. Any decision made in a hearing is final, unless you or those involved in the hearing appeal the decision to state or federal court. Your child may continue to remain in his or her present early intervention program until the decision is given, unless you and the early intervention agency have agreed otherwise.

After removing all personally identifiable information, The Tennessee Department of Education (TDOE) will send copies of final due process orders, or summaries of these orders, and findings of facts to the Interagency Coordinating Council (ICC) and the State Advisory Council. Executive summaries of all due process hearings (with personally identifiable information deleted) may also be made available to the public.

10. The Right to a Surrogate Parent

A surrogate parent must be appointed to represent the interest of a child when:

- The child has no parent or legal guardian,
- The child is a ward of the state, or
- The State cannot, after reasonable attempts, locate the child's parent or legal guardian.

A surrogate parent must have no conflict of interest and must be adequately trained to represent the child's needs in all matters as related to early intervention services. A surrogate parent may not be an employee of any state agency or an employee of a person providing early intervention services to the child or to any family member of the child. Surrogate parents are not employees of a public or state agency solely because they are paid to serve as a surrogate parent. Surrogate parents may represent a child in all matters relating to:

- The initial evaluation and assessment of the child
- The development, implementation, and the reviews of the IFSP, and
- The ongoing provision of early intervention services to the child and all other rights under the law that governs early intervention services as described in this booklet.

A Surrogate Parent is appointed to act in place of a child's parents when they are unable to participate in the process of early intervention. A surrogate parent is an adult who is knowledgeable of EI services and represents the child in this process. A biological parent may voluntarily designate a surrogate parent.



For More information,

To answer specific question, or to obtain a copy of the federal regulations covering procedural safeguards,

Please contact the Office of Early Childhood Programs by calling:

1-800-852-7157

Or write to:

The Director of
Early Childhood Programs
7th Floor, Andrew Johnson Towers
710 James Robertson Parkway
Nashville, TN 37243-0380

For general information concerning Tennessee's Early Intervention System please visit this web address at:

<http://tennessee.gov/education/speced/TEIS/>

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