



THE NEW JERSEY EARLY INTERVENTION SYSTEM (NJEIS) FAMILY RIGHTS

The “NJEIS Family Rights” describes your child’s and family’s rights, as defined by Part C of the Individuals with Disabilities Education Act (IDEA). The “NJEIS Family Rights” primarily uses language contained in the federal Part C regulations at 34 CFR Part 303. As you review the rights contained in this document, you are encouraged to look at the relevant NJEIS Rules at N.J.A.C. 8:17 available at <http://nj.gov/health/fhs/eis/policies.shtml>. The following describes and serves as notice on each of the specific procedural safeguards you are entitled to under the NJEIS.

THE RIGHT TO INFORMED PARENTAL CONSENT (34 CFR 303.401 & .404 and N.J.A.C. 8:17-1.3 & 4.2)

Consent means that you:

- Have been fully informed of all information relevant to the activity for which consent is sought, in your Native (primary) language or other 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.
- Understand and agree in writing to the carrying out of the activity for which your consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- Understand that the granting of consent is voluntary on your part.

Your written consent must be obtained before:

- The initial evaluation and assessment of your child is conducted; and
- Initiating the provision of early intervention services.

In granting consent to early intervention services, you are agreeing to satisfy the family cost share provisions in the NJEIS, if applicable.

If you do not consent, the local service provider/practitioner participating in Part C shall make reasonable efforts to ensure that you:

- Are fully aware of the nature of the evaluation and assessment or the services that would be available; and
- Understand that your child will not be able to receive the evaluation and assessment or the services which may have resulted from the evaluation and assessment, unless written consent is given.

In addition, as the parent of a child eligible under the NJEIS, you may determine whether you, your child or other family members will accept or decline any early intervention services under this system in accordance with New Jersey law and federal regulations. Participation in the Part C early intervention system for infants and toddlers is voluntary for you and your family. You may:

- Accept all services agreed to on the Individualized Family Service Plan (IFSP);
- Decline all services agreed to on the IFSP;
- Accept one or some of the services agreed to on the IFSP and decline other service(s); or
- Decline a service after first accepting it without jeopardizing other early intervention services under this program.

THE RIGHT TO WRITTEN PRIOR NOTICE (34 CFR 303.403 and N.J.A.C. 8:17-4.1)

Written prior notice must be given to you within 10 calendar days before a provider agency or service provider participating in NJEIS 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. Neither a practitioner providing early intervention services on an IFSP nor the practitioner’s provider agency shall revise services or eligibility without going through the IFSP team process.

The notice must be sufficiently detailed to inform you about:

- The action that is being proposed or refused;
- The reasons for taking the action;
- All procedural safeguards that are available under the program; and
- The state complaint procedures, including a description of how to file a complaint and the timelines under those procedures.

The written notice must be:

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

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 the NJEIS. (See section on Confidentiality of Information.)

THE RIGHT TO EXAMINE RECORDS (34 CFR 303.402 and N.J.A.C. 8:17-12.2)

In accordance with the confidentiality of information procedures outlined in this booklet, 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 regarding your child, and any other area of the NJEIS involving records about your child and your family.

THE RIGHT TO CONFIDENTIALITY OF INFORMATION (34 FR 303.460 & .610-627 and N.J.A.C. 8:17-12)

Each provider agency participating in the NJEIS must permit you to inspect and review any early intervention records relating to your child collected, maintained or used by the agency under Part C. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IFSP or hearing relating to identification, evaluation, or placement or the provision of appropriate early intervention services to your child. Such records will be made available to you no later than forty-five (45) calendar days after the request has been made.

To meet state and federal data collection and reporting requirements, timely communication and coordination of services for your family, the NJEIS maintains a secure electronic database of your child and family's information including name, address, date of birth, telephone number, personal identification number, eligibility services, and service providers.

Right to Inspect and Review

You have the right to inspect and review only the information relating to your child, or to be informed of that specific information pertaining to your child if any record includes information on more than one child.

The right to inspect and review records includes:

- The right to a response from the provider agency participating in the NJEIS to reasonable requests for explanations and interpretations of the record;
- The right to request that the agency provide copies of records, with the understanding that the provider agency participating in NJEIS may charge a reasonable fee for copies of your NJEIS records. The fee charged for the copies cannot have the effect of preventing you from exercising your right to inspect and review your records; and
- The right to have someone who is representing you inspect and review the record with your written consent.

An agency may presume that you have the authority to inspect and review records relating to your child unless the agency has been advised that you do not have the authority under applicable New Jersey law governing such matters as guardianship, separation and divorce.

Each provider agency participating in the NJEIS shall keep a record of parties obtaining access to early intervention records collected, maintained, or used under NJEIS (except access by you and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the record.

"Education Records" or "records" means the records covered by the Family Education Rights and Privacy Act of 1974 (FERPA); and

"Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part C.

Each provider agency participating in NJEIS shall provide you, upon request, with a list of the types and locations of early intervention records collected, maintained, or used by the agency. A provider agency participating in NJEIS may not charge a fee to search or to retrieve information under NJEIS.

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

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

The Department of Health and Senior Services (DHSS), on request, shall provide an opportunity for a hearing to challenge information in early intervention records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child. A hearing held under this section must be conducted according to the procedures under the Family Education Rights & Privacy Act (FERPA), regulations at 34 CFR 99.22

- If, as a result of the hearing, the DHSS decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child or family, your records shall be amended accordingly and you will be notified in writing of the amendment.
- If, as a result of the hearing, the DHSS decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child or family, you will be informed of your right to place in your child's record, a statement commenting on the information and providing any reasons for disagreeing with the decision.
- Any explanation placed in the early intervention records of your child under this section must:
 - Be maintained by the provider agency participating in NJEIS as part of the records of your child as long as the record or contested portion (that part of the record with which you disagree) is maintained by such agency; and
 - If the records of your child or the contested portion are disclosed by such agency to any party, the explanation must also be disclosed to the party.

Consent to Release Information

The early intervention agencies/practitioners assigned to your child and family who have access to your early intervention records include the following:

- Regional Early Intervention Collaborative (REIC) staff responsible for the system point of entry referral, data entry into an electronic NJEIS database, eligibility evaluation/assessment and, if eligible, transfer of your child and family's record.
- Service Coordination Units (SCUs)/service coordinator responsible for the coordination of your early intervention services.
- Early Intervention Program (EIP) provider agencies and practitioners responsible for the provision of your early intervention services.
- Department of Health and Senior Services, the lead agency responsible for the administration of the NJEIS.

If there is any information you would prefer not to be shared with the provider agency, please let your service coordinator know.

Your consent must be obtained before personally identifiable information is:

- Disclosed to parties, other than officials of participating agencies, unless the information is contained in early intervention records, and the disclosure is authorized without parental consent under 34 CFR Part 99; or
- Used for any purpose other than meeting a requirement under NJEIS.

Personally identifiable is information that includes: (1) the name of your child, your name, or the name of other family members; (2) the address of your child; (3) a personal identifier, such as your child's or your social security number; or (4) a list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Each agency participating in NJEIS must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at each agency participating in NJEIS must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding NJEIS policies and procedures that must comply with IDEA and FERPA.

Each agency participating in NJEIS must maintain, for public inspection, a current listing of the names and positions of employees within the agency who have access to personally identifiable information.

The agency participating in NJEIS must inform you when personally identifiable information collected, maintained, or used under NJEIS is no longer needed to provide services to your child.

The information must be destroyed, at your request. (Permanent records of your child's name, address, phone number, attendance and year completed may be maintained without time limitations.)

THE RIGHT TO FORMAL DISPUTE RESOLUTION

The DHSS has designated the state Early Intervention Procedural Safeguards Office, herein referred to as the Procedural Safeguards Office, to ensure the resolution of disputes within the Early Intervention System. Formal options for resolving disputes include mediation, impartial due process hearings and complaints.

All requests for complaint investigation, mediation, and/or impartial due process hearing, are to be filed with the Procedural Safeguards Office in writing consistent with these procedures. Assistance in completing a written request for formal dispute resolution is available to you at your request from your service coordinator, provider agency or the Procedural Safeguards Office.

No parties are entitled to legal fees from NJEIS under these formal dispute resolution procedures.

Mediation (34 CFR 303.419 and N.J.A.C. 8:17-13.3 through 13.7)

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 Procedural Safeguards Office identifies individual mediators to provide early intervention mediation services. Mediators are required to undergo training as a condition of serving as mediators. The Procedural Safeguards Office 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.

An individual who serves as a mediator under NJEIS:

- May not be an employee of DHSS or a provider agency that is involved in the provision of early intervention services or care of the child; and
- Must not have a personal or professional interest that conflicts with the person's objectivity.

A person serving as a mediator is not an employee of the DHSS or a provider agency solely because he or she is paid by DHSS to serve as a mediator. The Procedural Safeguards Office shall select mediators on a random, rotational, or other impartial basis.

Mediation cannot be used to deny or delay your right to an impartial due process hearing or any other rights afforded under NJEIS. You can request mediation alone or simultaneously with a request for an impartial 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 Procedural Safeguards Office to assist you, in your primary language and/or mode of communication to the maximum extent possible, and 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 REIC or service provider/agency's

request that you agree to participate in mediation shall be made in writing in your primary 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 a request for mediation, an impartial due process hearing or complaint investigation was requested at the same time. In that case, the mediation must be completed within fifteen (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. The state must incur the cost of the mediation process.

If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement regarding the resolution. The agreement must state that:

- All discussions that occurred during the mediation process shall remain confidential and may not be used as evidence in any subsequent impartial due process hearing or civil proceeding; and
- Neither the mediator nor any party to a mediation proceeding may record or transcribe discussions held during the mediation.

Any agreement reached at the mediation shall be signed by the parties before the conclusion of the mediation. The service coordinator will incorporate the terms of the mediation agreement into the IFSP.

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 impartial due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under Part C.

Due Process Hearings by the Office of Administrative Law (34 CFR 303.420-.425 and N.J.A.C. 8:17-13.8-14)

A statewide impartial due process hearing system is available to ensure that you may access a fair process for the resolution of individual disputes regarding the provision of early intervention services including the identification, evaluation and assessment, eligibility determination, placement or the provision of appropriate early intervention services.

An impartial due process hearing is an administrative hearing conducted by an administrative law judge from the Office of Administrative Law who is an impartial person and who has knowledge about Part C of IDEA and the needs of and services available for eligible and potentially eligible children and their families.

An impartial person means a person who:

- Is not an employee of an entity involved in the provision of early intervention services;
- Is not involved in the care of the child; and
- Does not have a personal or professional interest that would impair the person's objectivity in implementing the hearing process.

The administrative law judge is not an employee of DHSS or a provider agency solely because the administrative law judge is paid by the agency to implement the disagreement resolution process.

A written request for an impartial due process hearing must be filed within one year of the date you knew or should have known about the alleged action that forms the basis for the request.

If a parent wishes to file a written request for an impartial due process hearing, the service coordinator and/or the Procedural Safeguards Office shall assist the parent, in the parent's primary language and/or mode of communication to the maximum extent possible.

A person requesting an impartial due process hearing shall use the form at <http://www.state.nj.us/health/fhs/eis/procsafeguards.shtml> and send the form to:

- The Procedural Safeguards Office; and
- The other parties to provide notice to them of the issues in dispute.

The Procedural Safeguards Office requests that a parent requesting an impartial due process hearing, and a person making a request for an impartial due process hearing on a parent's behalf notify the Procedural Safeguards Office if the parent is to be represented at the impartial due process hearing no later than five days after the issuance of the notice to the Procedural Safeguards Office. However failure to inform the Procedural Safeguards Office will not preclude the parent from receiving representation from counsel.

The administrative law judge shall 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; and
- Provide a record of the hearing proceedings, including a written decision.

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

- To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under NJEIS;
- To present evidence and confront, cross-examine, and to compel the attendance of witnesses;
- 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;
- To obtain a written or electronic verbatim (word by word) transcription of the proceeding; and
- To obtain written findings of facts and decisions.

Any proceedings for implementing the due process hearing process in this section must be carried out at a time and place that is reasonably convenient to you.

No later than 30 calendar days after the Procedural Safeguards Office receives your request for a hearing, the due process impartial proceeding required under this section is completed and a written decision is mailed to each of the parties. A copy of the decision is also placed in your child's early intervention record.

Any party aggrieved (not satisfied) by the findings and decision of the due process hearing has the right to bring a civil action in state or federal court.

During the pendency (time period) of a due process hearing or during the time it takes to resolve an administrative complaint, your child and family will continue to receive the appropriate early intervention services currently being provided unless a provider agency participating in NJEIS and you agree otherwise. If your dispute involves decisions related to the initial provision of IFSP services, your child and family must receive those IFSP services that are not in dispute.

Administrative Complaints (34 CFR 303.510-.512 and N.J.A.C. 8:17-13.15-17)

You or your representative, other individuals, or organizations, including an organization or individual from another state, may file a complaint with the Procedural Safeguards Office alleging that an early intervention program, service provider, service coordinator, Regional Early Intervention Collaborative (REICs), the DHSS, or any other state agency involved in the early intervention system is violating or has violated a requirement of federal or state early intervention law or NJEIS policies and procedures. If you want to file a complaint, you may contact the Procedural Safeguards Office for assistance. A complaint must include:

- A written statement that an individual, program, or agency has violated a requirement of federal or state early intervention law or NJEIS policies and procedures;
- The facts on which the complaint is based; and
- The signature of the individual filing the complaint, or the signature of an individual authorized to act on behalf of an organization.

The alleged violation must have occurred not more than one year before the date that the complaint is received by the Procedural Safeguards Office unless a longer period is reasonable because:

- The alleged violation continues for that child or other children; or
- The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the Procedural Safeguards Office receives the complaint.

During the investigation, the Procedural Safeguards Office:

- Makes a determination if an independent on-site investigation to the local or regional provider agency is necessary, and conducts the investigation accordingly.
- Reviews all relevant information, including the results of any on-site investigation, pertinent written records and documents such as forms, reports and files, and any additional information provided by the party(s) and make an independent determination as to whether the public agency is violating a requirement of Part C;
- Gives the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- Conducts interviews with the complainant, the respondent(s) and any other relevant party including REICs and state agencies, if necessary.
- After reviewing all relevant information, make an independent determination as to whether a violation of a Part C requirement or NJEIS policy and procedure has occurred.

Within 60 calendar days of receipt of the complaint, unless exceptional circumstances exist with respect to a particular complaint, the Procedural Safeguards Office shall issue a written determination to the complainant and the named party(s) that addresses each allegation in the complaint and contains findings of fact and conclusions for each allegation in the complaint and the reasons for the Procedural Safeguards Office's final decision.

In resolving a complaint in which it finds a failure to provide appropriate services, the lead agency must address:

- How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement, crediting the family cost share if applicable or other corrective action appropriate to the needs of the child and the child's family; and
- Appropriate future provision of services for all infants and toddlers with disabilities and their families.

The Procedural Safeguards Office has procedures for effective implementation, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the 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:
 - The hearing decision is binding; and
 - The Procedural Safeguards Office 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 Procedural Safeguards Office within the lead agency.

THE RIGHT TO A SURROGATE PARENT (34 CFR 303.406 and N.J.S.A. 8:17-5.1-4)

- The rights of children eligible under NJEIS are protected if:
 - No parent, as defined in NJEIS, can be identified;
 - The service coordinator, after reasonable efforts, cannot discover the whereabouts of a parent; or
 - The child is a ward of the State under the laws of New Jersey.
- Parent means:
 - A biological or adoptive parent of a child;
 - A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
 - A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
 - An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
 - A surrogate parent who has been appointed in accordance with Part C of the Act.

Except as provided below, the biological or adoptive parent, when attempting to act as the parent under Part C and when more than one party is qualified to act as a parent, must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make early intervention decisions for the child.

If a judicial decree or order identifies a specific person or persons listed above to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of Part C.

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:

- Surrogate parents are selected in the manner authorized by New Jersey law.
- 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 a person providing early intervention services to the child or to any family member of the child; and
 - Resides in the same general geographic area as the child, whenever possible.
- A person who otherwise qualifies to be a surrogate parent is not an employee solely because he or she is paid by the public agency to serve as a surrogate parent.

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

- The evaluation and assessment of the child;
- Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;
- The ongoing provision of early intervention services to the child; and
- Any other rights established under the NJEIS.

CONTACT INFORMATION: For help in understanding your rights, you may contact anyone of the following:

- **New Jersey Early Intervention System Service Coordinator**
- **Regional Early Intervention Collaborative (REIC)** www.njeis.org
- **Disability Rights New Jersey (DRNJ)** (609) 292-9742, Toll Free #: (800) 922-7233, TTY #: (609) 633-7106
<http://www.drnj.org/>
- **Statewide Parent Advocacy Network (SPAN):** (973) 642-8100 or Toll Free #: (800) 654-7726, www.spannj.org
- **Department of Health and Senior Services (DHSS), NJEIS Procedural Safeguards Office:** (877) 258-6585 (Toll Free)
P.O. Box 364, Trenton, New Jersey 08625-0364, <http://nj.gov/health/fhs/eis/index.shtml>