



Early ACCESS Procedural Safeguards Manual for Parents

(Parental Rights in Early Intervention)

May 2006

Iowa Department of Education, Lead Agency



**Bureau of Children, Family and Community Services
Iowa Department of Education
Grimes State Office Building
Des Moines, IA 50319**

State of Iowa
Department of Education
Grimes State Office Building
Des Moines, Iowa
50319-0146

State Board of Education

Gene E. Vincent, Carroll, President
Sally J. Frudden, Charles City, Vice President
Charles C. Edwards, Jr., Des Moines
Sister Jude Fitzpatrick, West Des Moines
Rosie Hussey, Mason City
Wayne Kobberdahl, Council Bluffs
Gregory D. McClain, Cedar Falls
Mary Jean Montgomery, Spencer
Max Phillips, Woodward
Tara Richards, Indianola (Student Member)

Administration

Judy Jeffrey, Director and Executive Officer
of the State Board of Education
Gail Sullivan, Chief of Staff

Division of Early Childhood, Elementary and Secondary Education

Pam Pfitzenmaier, Administrator

Bureau of Children, Family and Community Services

Lana Michelson, Chief

It is the policy of the Iowa Department of Education not to discriminate on the basis of race, color, national origin, gender, disability, religion, creed, age or marital status in its programs or employment practices. If you have questions or grievances related to this policy, please contact: Chief, Bureau of Administration and School Improvement Services, Grimes State Office Building, Des Moines, Iowa 50319, (515) 281-5811.

Contents

Introduction	1
Evaluation and Assessment	3
Informed Consent.....	4
Written Prior Notice	5
Individualized Family Services Plan (IFSP).....	6
Early ACCESS Services.....	7
Confidentiality of Information/Records.....	8
Transition	11
Surrogate Parents	12
Options for Resolving Disagreements	
The Complaint Process.....	13
Resolution Facilitation.....	14
Mediation	14
Civil Action	16
Model Complaint Form	17

Introduction

Early ACCESS is a partnership between families and their young children with special needs (birth to age three) and providers from the Iowa Departments of Education, Public Health, and Human Services and the University of Iowa Child Health Specialty Clinics, and other community agencies. The purpose of this partnership is to work together to identify, coordinate and provide needed early intervention services and resources that will help families assist their infants or toddlers to grow and develop.

Parents have rights, known as procedural safeguards, which apply to every aspect of the early intervention process, such as evaluation, access to records, and Individualized Family Services Plan (IFSP) team participation. State and federal laws and regulations outline what needs to happen for eligible infants and toddlers with conditions or developmental delays to enhance their growth and development.

This document serves as **your** procedural safeguards notice and will help you understand the rights available to you and your child through a federal law, the *Individuals with Disabilities Education Improvement Act of 2004 (IDEA) Part C* and the *Iowa Administrative Rules for Early ACCESS Integrated System of Early Intervention Services*.

For more information on your rights, contact any of the following:

- Your Service Coordinator
- Your Regional Grantee (ask for the Director of Special Education)
- The Iowa Department of Education
Bureau of Children, Family, and Community Services
Grimes State Office Building
Des Moines, Iowa 50319-0146
515-281-3176
- The Iowa Parent Training and Information Center
321 East 6th Street
Des Moines, Iowa 50309
1-800-450-8667
515-243-1713
Email: info@askresource.org
Website: <http://askresource.org>
- Iowa Protection and Advocacy, Inc.
950 Office Park Road, Suite 221
West Des Moines, Iowa 50265
515-278-2502
515-278-0571 (TDD)
800-779-2502
Email: info@ipna.org

When should I get a copy of the procedural safeguards/family rights?

A copy of the procedural safeguards will be given to the parents of a child with a disability only 1 time a year, except that a copy also must be given to the parents:

- upon initial referral or parental request for evaluation;
- upon the first occurrence of the filing of a complaint; and
- upon request by a parent.

Are there other sources of information to find out more about IDEA 2004 Part C, the Iowa Administrative Rules for Early ACCESS, and other rules and regulations that are important for me to know?

The following listings are internet addresses of sites you can visit:

- Iowa Administrative Rules for Early ACCESS
<http://www.state.ia.us/earlyaccess>
- Individuals with Disabilities Education Act
<http://www.ed.gov/about/offices/list/osep/index.html>
- Family Educational Rights and Privacy Act (FERPA)
<http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- Health Insurance Portability and Accountability Act (HIPAA)
<http://www.hhs.gov/ocr/hipaa/>

Check with your Service Coordinator for other resources, refer to:

- *Working Things Out When Things Go Wrong*
- *Easy Does It! Working things out with a Resolution Facilitator*
- *Preparing for Preappeal or Mediation*
- *Special Education Mediation: A Guide for Parents*

IMPORTANT DEFINITIONS

Public Agency: the Lead Agency (Iowa Department of Education) and any other political subdivision of the State that is responsible for providing early intervention services to children eligible under IDEA and Early ACCESS rules. The Iowa Department of Education is responsible for the Early ACCESS complaint/due process system.

Grantee/Regional Grantee: a recipient of federal Part C funds or State funds that has the fiscal and legal obligation for ensuring the Early ACCESS system is carried out regionally.

Early Intervention Services: developmental services that are provided under public supervision; provided at no cost except where Federal or State law provides for a system of payments; and are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the Individualized Family Service Plan team. The services are in one or more of the following developmental areas: physical, cognitive, communication, social/emotional, or adaptive development.

Infant or Toddler with a Disability: an individual under 3 years of age who needs early intervention services because of developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of development including cognitive, physical, communication, social/emotional, and adaptive; or because of a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

Evaluation and Assessment

What is evaluation?

Evaluation is the process used by appropriate qualified personnel used to determine your child's initial and continued eligibility for Early ACCESS and gather information for planning to address the needs of your child and family.

Evaluation includes:

1. A review of existing information regarding your child, including screening results, evaluations, and records related to your child's education, health and medical history;
2. An evaluation of the status of your child in each developmental area (cognitive, physical, vision, hearing, communication, social/emotional, adaptive skills and health); and
3. A determination of the unique needs of your child related to the developmental areas.

Evaluation is provided at no cost to your family. Your written permission must be given before an evaluation is conducted.

What is assessment?

Assessment is the ongoing procedures used by appropriate qualified personnel to identify:

1. Your child's unique strengths and needs and the services appropriate to meet those needs, and
2. The resources, priorities and concerns of you and your family, as well as the supports and services necessary to enhance your ability to meet the developmental needs of your child (family assessment).

Family assessment is voluntary. If there is a family assessment, it will be done by trained personnel based on information provided through a family interview.

Who is available to help you get what you need during the evaluation?

A Service Coordinator is assigned to your family soon after your referral to Early ACCESS. Your Service Coordinator is your single point of contact in obtaining the assistance you need and is responsible for coordinating all early intervention services. Your Service Coordinator will assist with any questions you have about your Early ACCESS rights.

What is the timeline for these services?

Unless there are exceptional family circumstances (e.g., your child is ill), the evaluation and assessment must be completed within 45 calendar days after the referral for evaluation.

Informed Consent

When is informed parental consent required?

Your consent is required before:

1. Initial evaluation and assessment activities occur;
2. Personally identifiable information can be exchanged between agencies or service providers, unless such disclosure is allowed under the Individuals with Disabilities Education Act (IDEA) and Family Educational Rights and Privacy Act (FERPA);
3. Your child and family can receive Early ACCESS services;
4. Release of records at transition, unless such disclosure is allowed under the IDEA and FERPA; and
5. Using your public or private insurance to pay for any services.

Am I required to give consent for everything?

Your consent is voluntary and can be withdrawn at any time; however, it does not affect an action

1. That has occurred after the consent was given and
2. Before the consent was revoked.

You may exclude or withdraw consent for a particular early intervention service(s) without affecting other services that you desire.

What else do I need to know about consent?

1. The consent request form must be written in your native language or presented in a communication mode normally used by you.
2. You understand the activity for which consent is sought.
3. You agree to the activity in writing.
4. If the consent is for an evaluation, the areas to be evaluated must be written.
5. If the consent is for record release, the records must be listed and to whom the records are being sent.

What if I refuse to give consent for evaluation and assessment?

If you refuse to give consent for evaluation, your Service Coordinator will help you to understand of the nature of the evaluation and assessment and the services that would be available and that your child will not be able to receive the evaluation, assessment and services unless you give your consent.

The Regional Grantee may challenge your refusal to consent to evaluation by utilizing the due process system, and, if successful, obtain the evaluation.

Written Prior Notice

Your participation in decisions for your child's development is important. Laws require that you be involved during specific activities along the way since these affect your child's early intervention services.

"Written Prior Notice" is a written communication to you from your Service Coordinator when a service provider is proposing or refusing to initiate or to change the identification, evaluation, or placement of your child or the provision of appropriate Early ACCESS services to your child and/or family. Such notice must be given to you within a reasonable time after the provider's decision on the proposal or refusal has been made but *before* the service provider implements that action.

What information is included in the notice?

1. A description of the proposed or refused action;
2. An explanation of why an action is being proposed or refused;
3. The available procedural safeguards; and
4. How to file a complaint (and timelines) when you believe Early ACCESS requirements are violated.

What will the notice look like?

It will be a form, written in language that is understandable to the general public. It will be in your native language. If your native language (or other mode of communication) is not a written language, the Service Coordinator will take steps to ensure that you understand the notice. If you are deaf or blind, or have no written language, the communication will be that normally used by you (such as sign language, Braille or oral communication).

What if I don't agree with the proposed action or refusal?

There are many informal and formal options available to you. They are explained in the "Options for Resolving Disagreements" section of this booklet. Your Service Coordinator is available to help you understand your options. Other resources are listed in the Introduction section found at the front of this manual.

Upon request, your Service Coordinator or public agency will inform you of any free or low-cost legal services and other supportive services in your area.

Individualized Family Service Plan (IFSP)

The Individualized Family Service Plan (IFSP) is the written plan that outlines the early intervention services to be provided to your child and family. The goal of the IFSP process is to empower you with the resources, skills and processes to meet the needs of your child and family to enhance your child's growth and development.

Who develops and writes the IFSP?

The IFSP is developed and written in collaboration with you and your family and is modified based on the changing needs of your child and family. The "IFSP team" consists of your family, your Service Coordinator, and service providers working with your child and family.

When are the IFSP meetings and who will be there?

A meeting to develop the initial IFSP must be conducted within 45 calendar days after a referral for evaluation (unless extenuating circumstances occur). A meeting must be conducted at least annually to evaluate the IFSP and revise it as needed. The initial and each annual IFSP meeting must include parents, other family members you want there, an advocate if you request that one attends, your Service Coordinator, a person or persons involved in the evaluation, people who may be providing early intervention services and a primary health care provider or designee, if feasible.

If a person directly involved in conducting your child's evaluation is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including one of the following: participation in a telephone conference call, having a knowledgeable authorized representative attend the meeting or making pertinent records available at the meeting.

IFSP meeting arrangements will be made with, and written notice provided to, your family and other participants in advance of the meeting. Meetings will be held in settings and at times that are convenient to you and be conducted in your native language or other mode of communication used by your family unless it is not feasible to do so.

How often will the IFSP be reviewed?

Periodic reviews help to determine progress made toward goals and whether modification or revision of the outcome goals or services is necessary. There will be a review every six months or more frequently if needed, or if you request a review. The reviews may be carried out by meeting or another means that is acceptable to you and the IFSP team, such as a conference call. A meeting will be held at least annually to evaluate the IFSP and revise its provisions, as appropriate. The results of any current evaluations and other information available from ongoing assessments of your child and family will be used to determine any changes in the provisions of the IFSP.

Early ACCESS Services

Early ACCESS services that are appropriate and agreed-upon by the IFSP team are provided at no cost to your child and family. These services are written on the IFSP. The law defines these services and they are provided year round. Services include:

- Assistive technology
- Audiology
- Family training, counseling, and home visits
- Health
- Medical services for diagnostic or evaluation
- Nursing
- Nutrition
- Occupational therapy
- Physical therapy
- Psychology
- Social work
- Special instruction
- Speech-language pathology, sign language, and cued speech
- Transportation
- Vision

What is meant by services in “natural environments”?

Whenever possible, Early ACCESS services should occur in the home or in programs for typically developing children. Services may occur in other settings only if you and your service providers feel that early intervention cannot be satisfactorily achieved in a setting natural for your child.

When do Early ACCESS services begin?

Once a referral is received, a Service Coordinator will be appointed as soon as possible. Unless there are exceptional circumstances, the process of evaluation, family assessment and the development of the Individualized Family Service Plan (IFSP) must be completed within 45 calendar days following the referral for evaluation. A delay may occur if your child is hospitalized or your family has other extenuating circumstances.

Services should begin within 30 calendar days of the initial IFSP meeting. An interim IFSP may be developed and services begin prior to the completion of the evaluation and family assessment if your child has obvious and immediate needs and if you give your consent. An interim IFSP includes the name of your Service Coordinator (who is responsible for the implementation and coordination with other persons and agencies, and a list of the early intervention services that have been determined to be needed immediately by your child and family at the time of referral. The 45-day requirement for evaluation and family assessment would still be in effect.

Confidentiality of Information/Records

May I have access to my child's Early ACCESS records?

Early ACCESS records are considered "educational records" and are subject to the rules and regulations of the Individuals with Disabilities Education Act (IDEA) and the Family Educational Rights and Privacy Act (FERPA). A public agency must permit you to inspect and review your child's early intervention records relating to evaluations and assessments, eligibility determination, development and implementation of the IFSP, individual complaints dealing with your child, and any other area involving records about your child and your family. The public agency will comply with a request to review or inspect the records without unnecessary delay – no longer than 45 calendar days after requested and before any meeting regarding an IFSP or any hearing.

What does the "right to inspect" include?

1. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
2. The right to request that the agency provide copies of the records containing the information (if failure to provide the copies would effectively prevent you from exercising the right to inspect and review the records);and
3. The right to have your representative inspect and review the records.

The agency may presume that you have the authority to inspect and review your child's early intervention records unless the agency has been advised that you do not have the authority under applicable State law governing such matters as guardianship, separation, or divorce.

How are my child's early intervention records protected regarding who has access to the records?

With the exception of access by parents and authorized employees of the agency, the agency maintaining the records shall keep a record of parties obtaining access to early intervention records, including:

1. The name of the party;
2. The date access was given; and
3. The purpose for which the party is authorized to use the records.

If the record includes information on more than one child, you have the right to inspect and review only the information relating to your child or to be informed of that specific information. The participating agency shall provide you, on request, a list of the types and locations of education records collected, maintained or used by the agency.

The participating agency may charge a fee for copies of records that are made for you if the fee does not effectively prevent you from exercising your right to inspect and review those records. The agency may not charge a fee for the search or retrieval of the information.

What if I don't think the information in the record is accurate?

If you believe that the information collected, maintained or used is inaccurate, misleading or violates the privacy or other rights of your child, you may ask the agency that maintains the information to amend the record. The agency will decide within a reasonable amount of time whether to amend the information in accordance with the request. If the agency decides to refuse to amend the information in accordance of the request, it will inform you of the refusal and advise you of the right to a hearing.

Upon your request, the agency will provide an opportunity for a hearing to challenge information in the early intervention record to ensure that it is not inaccurate, misleading or otherwise in violation of the privacy or other rights of your child. As a result of the hearing:

1. If the decision is that the information is misleading, inaccurate or otherwise in violation of the privacy or other rights of your child, the agency shall amend the information accordingly and inform you in writing.
2. If the decision is that the information is **not** inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, the agency will inform you of the decision. The agency will also inform you of your right to place in the records it maintains on your child a statement commenting on the information and setting forth your reasons for disagreeing with the decision of the agency.
3. Any explanation placed in the records of your child must be maintained by the agency as part of the record as long as the record or contested portion is maintained by the agency. If the record or the contested portion of the record is disclosed by the agency to any party, your explanation must also be disclosed.

When people say the records should or should not have personally identifiable information, what do they mean?

Personally identifiable means that information includes:

1. The name of your child or any other family member;
2. Your child's home address;
3. Your child's social security number, or another personal identifier; or
4. A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Why would I want to examine my child's Early ACCESS records or why would others ask to look at the records?

One reason would be to look at the information that is gathered in your child's record that identifies, evaluates and determines what services your child/family is receiving. By looking at the records, some information could indicate whether or not your child is receiving the appropriate early intervention services and what other services may be appropriate after your child's third birthday.

Does the agency that has my child's Early ACCESS records need to ask me for permission to release the information?

Yes, as a general rule, parental consent must be obtained before personally identifiable information is disclosed to anyone (other than officials of participating agencies collecting or using the information). There are exceptions, however, to the parental consent requirement. For example, education officials may disclose education records without prior consent when necessary to respond to a health or safety emergency.

Once information is part of your child's Early ACCESS record, it becomes protected by FERPA and can only be released in accordance with FERPA regulations. This includes any medical or outside evaluation information admitted to your child's record.

If your child transitions to Part B preschool services at age three, your consent is not required. Your child's Early ACCESS records will be sent to the Area Education Agency responsible for special education services in your school district.

Are there other steps a public agency takes to protect and safeguard my child's confidentiality and privacy?

1. One official at each agency shall assume responsibility for ensuring the confidentiality of personally identifiable information;
2. All people collecting or using personally identifiable information must receive confidentiality and privacy training or instruction on confidentiality and privacy; and
3. Each participating agency shall maintain 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.

What happens to my child's Early ACCESS records when they are no longer needed?

The public agency will inform you when personally identifiable information collected, maintained, or used is no longer needed to provide early intervention services to your child. The information will be destroyed at your request if the records are no longer needed. The decision as to when records are no longer needed is one that largely falls to the discretion of the public agency; however, some information is kept as part of a permanent record, including things such as name and address.

Transition

What happens when my child reaches age three?

Early ACCESS provides appropriate early intervention services for eligible children until their third birthday. After age three, your child may be eligible for Early Childhood Special Education services under IDEA Part B (special education services for children ages three through 21) or other community programs or services.

When does transition planning begin?

Transition planning starts when your child enters Early ACCESS. It is part of the IFSP process. You will be actively involved throughout the time examining your goals for your child and options for beyond his/her third birthday. A transition planning meeting will be held at least 90 days and up to nine months before your child's third birthday. The plan will include your child's program options for the period from his/her third birthday through the remainder of the school year. The plan may also include any services such as Early Childhood Special Education services or other community programs or services.

How do I know if my child is eligible for Part B Early Childhood Special Education services?

There will be a meeting with your family, the Regional Grantee designee, your Service Coordinator, and your area education agency. During the meeting the team will review the IFSP evaluation and assessment data and decide if additional assessment information will be needed. The plan will address collecting the assessment information needed to determine if your child is eligible for Early Childhood Special Education services.

What happens if my child is eligible for Part B Early Childhood Special Education services?

In order to develop an Individualized Education Plan (IEP) describing any services your child may receive, an IEP meeting will be held. Your family and your Service Coordinator will be invited to the meeting. The IEP team will include area education agency consultants who completed assessments of your child, local school district representatives, and at your request other individuals that may have knowledge of your child. Your child's Early ACCESS record will be sent to the Area Education Agency to ensure a smooth transition and continuity of services.

What if my child is not eligible for Part B Early Childhood Special Education services?

With your approval, a transition planning meeting will be held with you, your Service Coordinator, current service providers, and/or service providers who may potentially provide services to your child. In order to facilitate a smooth transition to the appropriate services and to ensure continuity of services to your child, your Service Coordinator will request your permission to send your child's record to the other applicable community agencies providing programs and services.

Surrogate Parents

Why would a surrogate be needed?

Early ACCESS services are delivered with parental permission. The rights of children under Early ACCESS are protected even if:

1. No parent can be identified;
2. With reasonable efforts, no parent can be located;
3. The child is a ward of the State and the judge overseeing the child's case alternatively appoints a surrogate parent; or
4. The child is an unaccompanied homeless youth.

If these conditions exist, then a surrogate parent would need to be assigned. It is the responsibility of the Regional Grantee to determine which children need a surrogate and to assign a surrogate parent for a child.

What are the qualifications of a surrogate parent?

A surrogate parent must:

1. Not have a personal or professional interest that conflicts with the interests of the child;
2. Have knowledge and skills that ensure adequate representation of the child;
3. Not be an employee of the Iowa Department of Education, the Regional Grantee, or any other agency that is involved in the education or care of the child; and
4. Not be a person providing early intervention services to the child.

A person who otherwise qualifies to be a surrogate parent is not considered an employee of the agency solely because he/she is paid by the agency to serve as a surrogate parent.

What are the responsibilities of a surrogate parent?

A surrogate parent may represent a child in all matters related to the evaluation and assessment of the child, development and implementation of the IFSP (including annual evaluations and periodic reviews), the ongoing provision of early intervention services and any other rights under Early ACCESS and IDEA.

Options for Resolving Disagreements

The Complaint Process

Does the Iowa Department of Education provide a procedure to file a complaint?

The Iowa Department of Education has written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another State, by providing for the filing of a complaint with the Iowa Department of Education, and
2. Widely disseminating State procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities

In resolving a complaint in which the Iowa Department of Education has found a failure to provide appropriate services, the State must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, and
2. Appropriate future provision of services for all children with disabilities.

What must the procedure include?

In its complaint procedures, the Iowa Department of Education includes a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the Iowa Department of Education determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum:
 - a. At the discretion of the public agency, a proposal to resolve the complaint and
 - b. With the consent of the parent, an opportunity for the public agency to engage the parent in mediation, or alternative means of dispute resolution;
4. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of IDEA; and
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:
 - a. Findings of fact and conclusion and
 - b. The reasons for the Iowa Department of Education's final decision.

Are there other limits to this procedure? Are extensions beyond 60 days allowed?

The Iowa Department of Education's procedures also:

1. Permit an extension of the time limit only if:
 - a. Exceptional circumstances exist with respect to a particular complaint or
 - b. The parent and the public agency agree to extend the time to conduct the activities; and
2. Include procedures for effective implementation of the Iowa Department of Education's final decision, if needed, including:

- a. Technical assistance activities;
- b. Negotiations; and
- c. Corrective actions to achieve compliance.

Who can file a complaint and how is it done?

An organization or individual may file a signed written complaint. The complaint must include a statement that a public agency has violated a requirement of Part C of IDEA 2004. The complaint must also include:

1. The facts on which the statement is based;
2. The signature and contact information for the complainant; and
3. If alleging violations against a specific child.

If the complaint alleges that violations occurred regarding a specific child, the complaint must include:

1. The name and address of the residence of the child;
2. The name of the Regional Grantee/agency/program in charge of the child's services;
3. In the case of a homeless child (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11434a(2)), available contact information for the child, and the name of the Regional Grantee/agency/program in charge of the child's services;
4. A description of the nature of the problem of the child, including facts relating to the problem; and
5. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

The complaint must allege that the violation occurred not more than one year prior to the date that the complaint is received.

The party filing the complaint must forward a copy of the complaint to the Regional Grantee serving the child at the same time the party files the complaint with the Iowa Department of Education.

A model form to file the complaint can be found on the last page of this manual.

Methods Available for Resolving Concerns and Complaints

Resolution Facilitation

Resolution Facilitation is a way to resolve differences instead of, or before, using formal proceedings provided by the State. A Resolution Facilitator assists in resolving differences over early intervention services and issues between parents, public agencies and private service providers.

If differences arise, open discussion is the logical first step toward resolution. A third party can provide an objective review of both parties' concerns in support of a successful conclusion. The Resolution Facilitator is trained in mediation and is that objective third party. The Resolution Facilitator may be a neutral party from within your Early ACCESS Region, or if necessary, someone from another Region. The Resolution Facilitator service is provided at no cost to parents or service providers.

Mediation

The Iowa Department of Education and Regional Grantees assure that procedures are established and implemented to allow parties to resolve disputes through a mediation process. Mediation is voluntary on the part of all parties and conducted by a qualified and impartial mediator who is trained in effective mediation techniques. Mediation can occur at any time, even prior to the filing of a due process hearing request.

Where can I find out about people who are mediators and who pays for a mediation?

The Iowa Department of Education:

1. Maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services;
2. Selects mediators on a random, rotational, or other impartial basis; and
3. Bears the cost of the mediation process, including the costs of meetings with a disinterested party when the choice is to not use mediation.

How do I know that the mediator is impartial?

An individual who serves as a mediator:

1. May not be an employee of the Iowa Department of Education or the public agency or private service provider that is providing direct services to your child;
2. Must not have a personal or professional conflict of interest; and
3. The person who is otherwise qualified is not an employee of the Iowa Department of Education because he or she is being paid to be the mediator.

What are some things I need to know about the mediation process?

1. 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.
2. If you and the public agency resolve a dispute through the mediation process, you and the public agency must execute a legally binding agreement.

3. Both you and a representative of the public agency who have the authority to bind such agencies must sign the legally binding agreement.
4. A written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.
5. The parties to mediation will be required to sign a confidentiality pledge prior to the commencement of the mediation to ensure that all discussions that occur during mediation remain confidential.

What if I don't want to use a mediation process?

The Regional Grantee may offer to those not using the mediation process, an opportunity to meet with a disinterested party, at a time and location convenient to the parents.

Who is a disinterested party?

1. An appropriate alternative dispute resolution entity;
2. The Iowa Parent Training and Information Center; or
3. A community parent resource center.

What would the disinterested party do?

The disinterested party would explain the benefits of, and encourage the use of, the mediation process to you.

IMPARTIAL DUE PROCESS HEARING

Whenever a due process hearing request is filed, you or the Regional Grantee involved in the dispute must have an opportunity for an impartial due process hearing.

Who is responsible for conducting the due process hearing?

The Iowa Department of Education must conduct the hearing.

Who listens to the information and makes decisions at the due process hearing?

A person with the title of administrative law judge (ALJ) assumes that role at a due process hearing. The Iowa Department of Education keeps a list of the persons who serve as ALJs. The list must include a statement of the qualifications of each of those persons.

What are the qualifications of an impartial ALJ?

At a minimum, an ALJ must not be:

1. An employee of the Iowa Department of Education, the AEA or the district that is involved in the education or care of the child; or
2. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

An ALJ:

1. Must possess knowledge of, and the ability to understand, the provisions of the IDEA 2004, Federal and State regulations pertaining to IDEA, and legal interpretations of the IDEA by Federal and State courts;
2. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

3. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as an ALJ.

In the meantime, where does my child go to school?

Your child must remain in his or her current educational placement during the period of the administrative or judicial proceedings, unless all parties agree otherwise.

What can be discussed at the due process hearing?

The party requesting the due process hearing shall not be allowed to raise any issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees otherwise.

Is there a timeline that needs to be followed for requesting a due process hearing?

You or Regional Grantee must request an impartial hearing within two years of the date that you or Regional Grantee knew or should have known about the alleged action that forms the basis of the due process hearing request.

Are there exceptions to the timeline rule?

The timeline does not apply if you were prevented from filing a due process hearing request due to:

1. Specific misrepresentations by the Regional Grantee that it had resolved the problem forming the basis of the due process hearing request.
2. The Regional Grantee withheld information from you that was required to be provided to you.

What are the rights in a due process hearing that I need to be aware of according to the law?

Any party to a hearing conducted has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
4. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
5. Obtain a written, or, at the option of the parents, electronic findings of fact and decisions.

What about disclosure of additional information at the due process hearing?

Each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing at least five business days prior to a hearing. An ALJ may bar any party that fails to comply with the five business day rule from

introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Are there rights specific to me as parent at the due process hearing?

When you are involved in hearings you must be given the right to:

1. Have your child, who is the subject of the hearing, present;
2. Open the hearing to the public; and
3. Have the record of the hearing and the findings of fact and decisions described provided at no cost to you.

Am I restricted from filing other due process hearing requests?

Nothing precludes you from filing a separate due process hearing request on an issue separate from a due process hearing request already filed.

Is the decision of the ALJ final?

A decision made in a hearing is final, except that any party involved in the hearing may appeal the decision.

If I am not happy with the ALJ decision, what can I do?

Any party shall have the right to bring civil action with respect to the due process hearing decision. Such action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

Who else will know about the due process hearing decision?

The Iowa Department of Education, after deleting any personally identifiable information, must:

1. Transmit the findings and decisions to the State Special Education Advisory Panel; and
2. Make those findings and decisions available to the public.

What is the time line for due process hearings?

The Iowa Department of Education must ensure that not later than 30 days:

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

Civil Action

Any party aggrieved by the findings and decisions regarding an administrative complaint has the right to bring a civil action with respect to the complaint. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

Is there a time limitation to pursue civil action?

If you disagree with the decision of the Iowa Department of Education, you shall have 90 calendar days from the date of the decision to file a civil action.

Are there additional requirements for civil action?

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at the request of a party; and
3. Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

Does my child still receive early intervention services while we are involved in a complaint proceeding or action?

Unless you and the Iowa Department of Education agree otherwise, your child will continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, your child will receive the services not in dispute.

Model Form to Assist Parents in Filing a Complaint

A complaint process can be used when you believe a public agency has **violated a requirement** of the Individuals with Disabilities Education Act (IDEA) Part C.

Identify the agency or agencies that you believe violated a requirement of the Individuals with Disabilities Education Act 2004 Part C.

If child-specific, name and address of the residence of the child:

Provide a description of the nature of your complaint regarding your child's Early ACCESS services, including facts relating to the your complaint. (Use additional sheets of paper if more space is needed.)

Include a proposed resolution of the problem to the extent known and available to you:

Did this alleged violation occur not more than one year prior to the date that the complaint was received by the Department of Education? YES___ NO___

Organization or person filing the complaint _____

Address _____

Contact person, if organization _____

Telephone number or other method of contact _____

Send a copy of the completed form to:

1. The Regional Grantee Administrator
AND
2. Director, Iowa Department of Education
Grimes State Office Building
400 East Grand Ave.

Des Moines, IA 50319-0146