

THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
PUBLIC SCHOOL SYSTEM
EARLY INTERVENTION PROGRAM

PROCEDURAL SAFEGUARDS NOTICE

(Parents Rights)



Revised May 2019

Part C of the Individuals with Disabilities Education Act (IDEA), requires the **Commonwealth of the Northern Mariana Islands Public School System (CNMI PSS)** to provide parents of infants and toddlers with disabilities, birth to three years old, with a notice containing a full explanation of the procedural safeguards available to you under the IDEA. A copy of this notice must be given to parents upon initial referral to early intervention, upon parent request for an evaluation and assessment or upon a parent request for a copy. A copy must also be given to parents when you file a State Complaint and/or when you file a Due Process Complaint.

This procedural safeguards notice must include a full explanation of all of the procedural safeguards available under complaint procedures, parent consent, prior written notice, other procedural safeguards, e.g. mediation, due process complaints, resolution process, and impartial due process hearing, and confidentiality of information provisions. This model form provides a format that **CNMI PSS** has chosen to use to provide information about procedural safeguards to parents.

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GENERAL INFORMATION

GENERAL RESPONSIBILITY OF PSS FOR PROCEDURAL SAFEGUARDS

§303.400

The lead agency, PSS must establish or adopt the procedural safeguards that meet the requirements of Part C of IDEA, including the provisions on confidentiality in §§ 303.401 through 303.417, parental consent and notice in §§ 303.420 and 303.421, surrogate parents in § 303.422, and dispute resolution procedures in § 303.430;

Ensure the effective implementation of the safeguards by each participating agency (including the PSS and EIS providers) in the statewide system that is involved in the provision of early intervention services under Part C of IDEA and

Make available to parents an initial copy of the child's early intervention record, at no cost to the parents.

Confidentiality of Personally Identifiable Information and Early Intervention Records

If your native language or other mode of communication is not a written language, **CNMI PSS** must ensure that:

1. The notice is translated for you orally by other means in your native language or other mode of communication;
2. You understand the content of the notice; **and**
3. There is written evidence that 1 and 2 have been met.

CONFIDENTIALITY AND OPPORTUNITY TO EXAMINE RECORDS

§303.401

The PSS ensures that the parents of a child referred to the Early Intervention Program are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with Federal and State laws.

Confidentiality Procedures: As required under sections 617(c) and 642 of the Act, the regulations in §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the CNMI PSS and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR part 99. The CNMI has procedures in effect to ensure that;

- Participating agencies (including the PSS and EIS providers) comply with the

- Part C confidentiality procedures in §§303.401 through 303.417; and
- The parents of infants or toddlers who are referred to, or receive services under this part, are afforded the opportunity to inspect and review all Part C early intervention records about the child and the child's family that are collected, maintained, or used under this part, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under this part.

Applicability and Timeframe of Procedures: The confidentiality procedures described in the paragraph above apply to the personally identifiable information of a child and the child's family that is contained in early intervention records collected, used, or maintained by the PSS or an EIS provider and applies from the point in time when the child is referred for early intervention services until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable Federal and State laws.

Disclosure of Information: The Early Intervention Program must disclose to the PSS Part B Program where the child resides, in accordance with § 303.209(b)(1)(i) and (b)(1)(ii), the following personally identifiable information under the Act: A child's name, a child's date of birth and parent contact information including parents' names, addresses, and telephone numbers). This information is needed to enable the PSS part B program to identify all children potentially eligible for services under Part B of the IDEA.

Option to Inform a Parent about Intended Disclosure: Parents are not provided the option to object to the discloser of this information.

CONFIDENTIALITY

§300.402

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by lead agencies and EIS providers pursuant to part C of the Act, and consistent with §§ 303.401 through 303.417. The regulations in §§ 303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State lead agency and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR part 99.

DEFINITIONS

§300.403

The following definitions apply to §§ 303.402 through 303.417 in addition to the definition of personally identifiable information in § 303.29 and disclosure in 34 CFR 99.3:

Destruction means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under § 303.29.

Early intervention records mean all records regarding a child that are required to be collected, maintained, or used under Part C of the Act and the regulations in this part.

Participating agency means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the Act and the regulations in this part with respect to a particular child. A participating agency includes the PSS and EIS providers and any individual or entity that provides any part C services (including service coordination, evaluations and assessments, and other part C services), but does not include primary referral sources, or public agencies (such as the State Medicaid or CHIP program) or private entities (such as private insurance companies) that act solely as funding sources for part C services.

NOTICE TO PARENTS

§303.404

The PSS Early Intervention Program must give notice when a child is referred under Part C of the Act that is adequate to fully inform parents about the requirements in § 303.402, including;

A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the CNMI intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;

A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in §§ 303.401 through 303.417; and

A description of the extent that the notice is provided in the native languages of the various population groups in the CNMI.

ACCESS RIGHTS

§303.405

Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to §§ 303.430(d) and 303.435 through 303.439, and in no case more than 10 days after the request has been made.

The right to inspect and review early intervention records under this section includes;

- The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;
- The right to request that the participating agency provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- The right to have a representative of the parent inspect and review the early intervention records.
- An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been provided documentation that the parent does not have the authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce.

RECORD OF ACCESS

§303.406

Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under Part C of the Act (except access by parents and authorized representatives and 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 early intervention records.

RECORDS ON MORE THAN ONE CHILD

§303.407

If any early intervention record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

LIST OF TYPES AND LOCATIONS OF INFORMATION

§303.408

Each participating agency must provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.

FEES FOR RECORDS

§303.409

Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A participating agency must provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting. A participating agency may not charge a fee to search for or to retrieve information under this part.

AMENDMENTS OF RECORDS AT A PARENT'S REQUEST

§303.410

A parent who believes that information in the early intervention records collected, maintained, or used under this part is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the participating agency that maintains the information amend the information. The participating agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the participating agency refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under § 303.411.

OPPORTUNITY FOR A HEARING

§303.411

The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a due process hearing under the procedures in § 303.413 or may request a hearing directly under the CNMI procedures (*i.e.*, procedures that are consistent with the FERPA hearing requirements in 34 CFR 99.22).

RESULT OF HEARING

§303.412

If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child or parent, it must amend the information accordingly and so inform the parent in writing. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, it must inform the parent of the right to place in the early intervention records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

Any explanation placed in the early intervention records of the child under this section must: Be maintained by the agency as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency; and if the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

HEARING PROCEDURES

§303.413

A hearing held under § 303.411 must be conducted according to the procedures under 34 CFR 99.22.

CONSENT PRIOR TO DISCLOSURE OR USE

§303.414

Except as provided in paragraph (b) of this section, prior parental consent must be obtained before personally identifiable information is;

- Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under this part, subject to paragraph (b) of this section; or
- Used for any purpose other than meeting a requirement of this part.

PSS or other participating agency may not disclose personally identifiable information, as defined in § 303.29, to any party except participating agencies (including the PSS, and EIS providers) that are part of the CNMI's Part C system without parental consent unless authorized to do so under: Sections 303.401(d), 303.209(b)(1)(i) and (b)(1)(ii), and 303.211(b)(6)(ii)(A); or

One of the exceptions enumerated in 34 CFR 99.31 (where applicable to Part C), which are expressly adopted to apply to Part C through this reference. In applying the exceptions in 34 CFR 99.31 to this part, participating agencies must also comply with the pertinent conditions in 34 CFR 99.32, 99.33, 99.34, 99.35, 99.36, 99.38, and 99.39;

in applying these provisions in 34 CFR part 99 to part C, the reference to; 34 CFR 99.30 means § 303.414(a); “Education records” means early intervention records under §303.403(b); “Educational” means early intervention under this part; “Educational agency or institution” means the participating agency under § 303.404(c); “School officials and officials of another school or school system” means qualified personnel or service coordinators under this part; “State and local educational authorities” means the lead agency under § 303.22; and “Student” means child under this part.

The PSS must provide policies and procedures to be used when a parent refuses to provide consent under this section (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this part), provided that those procedures do not override a parent’s right to refuse consent under § 303.420.

SAFEGUARDS

§303.415

Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages. One official at each participating agency 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 the CNMI’s policies and procedures under §§ 303.401 through 303.417 and 34 CFR part 99. Each participating agency must 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.

DESTRUCTION OF INFORMATION

§303.416

The participating agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide services to the child under part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR parts 76 and 80. The information must be destroyed at the request of the parents. However, a permanent record of a child’s name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and EIS provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation.

ENFORCEMENT

§303.417

The PSS has in effect policies and procedures, including sanctions and the right to file a complaint under §§ 303.432 through 303.434, that the CNMI uses to ensure that its policies and procedures, consistent with §§ 303.401 through 303.417, are followed and that the requirements of the Act and the regulations in this part are met

PARENTAL CONSENT AND NOTICE

PARENTAL CONSENT AND ABILITY TO DECLINE SERVICES

§303.420

PSS, the lead agency, must ensure parental consent is obtained before;

- All evaluations and assessments of a child are conducted
- Early intervention services are provided to the child
- Public benefits or insurance or private insurance is used if such consent is required and
- Disclosure of personally identifiable information

If a parent does not give consent, the PSS must make reasonable efforts to ensure that the parent:

- Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and
- Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.

The PSS may not use the due process hearing procedures under Part C or Part B of the Act to challenge a parent's refusal to provide any consent that is required under this section. The parents of an infant or toddler with a disability;

- Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention service under this part at any time, in accordance with CNMI law; and
- May decline a service after first accepting it, without jeopardizing other early intervention services under this part.

PRIOR WRITTEN NOTICE AND PROCEDURAL SAFEGUARDS NOTICE

§303.421

Prior written notice must be provided to parents a reasonable time before the PSS or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family.

Content of Notice. The notice must be in sufficient detail to inform parents about;

- The action that is being proposed or refused;
- The reasons for taking the action; and
- All procedural safeguards that are available under Part C including a description of mediation and how to file a State complaint and a due process complaint and

any timelines under those procedures.

Native language. The notice must be;

- Written in language understandable to the general public; and
- Provided in the native language, as defined in § 303.25, of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so

If the native language or other mode of communication of the parent is not a written language, the public agency or designated EIS provider must take steps to ensure that;

- The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
- The parent understands the notice; and
- There is written evidence that the requirements of this paragraph have been met.

(d) A list of personal characteristics (or other information that would make it possible to identify your child with reasonable certainty.

SURROGATE PARENTS

§303.422

PSS or other public agency must ensure that the rights of a child are protected when;

- No parent (as defined in § 303.27) can be identified;
- The PSS or other public agency, after reasonable efforts, cannot locate a parent;
- Or the child is a ward of the State under the laws of the CNMI.

Duty of the PSS and other public agencies: The duty of the PSS, or other public agency of this section, includes the assignment of an individual to act as a surrogate for the parent. This assignment process must include a method for;

- Determining whether a child needs a surrogate parent; and
- Assigning a surrogate parent to the child.

In implementing the provisions under this section for children who are wards of the State or placed in foster care, the PSS must consult with the public agency that has been assigned care of the child.

Wards of the State. In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by the PSS, may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements.

Criteria for Selection of Surrogate Parents. The PSS or other public agency may select a surrogate parent in any way permitted under State law. Public agencies must ensure that a person selected as a surrogate parent;

- Is not an employee of the PSS or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child;
- Has no personal or professional interest that conflicts with the interest of the child he or she represents; and
- Has knowledge and skills that ensure adequate representation of the child.

Non-employee Requirement; Compensation. A person who is otherwise qualified to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

Surrogate Parent Responsibilities. The surrogate parent has the same rights as a parent for all purposes under this part.

Lead Agency (PSS) Responsibility. The PSS must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

ACCESS RIGHTS

34 CFR §300.613

The **CNMI PSS** must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by **CNMI PSS** under Part B of the IDEA. The **CNMI PSS** must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

1. Your right to a response from the **CNMI PSS** to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the **CNMI PSS** provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
3. Your right to have your representative inspect and review the records.

The **CNMI PSS** may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable **CNMI** law governing such matters as guardianship, or separation and divorce.

RECORD OF ACCESS

§300.614

Each **CNMI PSS** must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except access by parents and authorized employees of the **CNMI PSS**), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

RECORDS ON MORE THAN ONE CHILD

§300.615

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

LIST OF TYPES AND LOCATIONS OF INFORMATION

§300.616

On request, the **CNMI PSS** must provide you with a list of the types and locations of education records collected, maintained, or used by the **PSS**.

FEES

§300.617

The **CNMI PSS** may charge a fee for copies of records that are made for you under Part B of the IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

The **CNMI PSS** may not charge a fee to search for or to retrieve information under Part B of the IDEA.

AMENDMENT OF RECORDS AT PARENT'S REQUEST

§300.618

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the **CNMI PSS** that maintains the information to change the information.

The **CNMI PSS** must decide whether to change the information in accordance with your request within a reasonable period of

DISPUTE RESOLUTION OPTIONS

CNMI DISPUTE RESOLUTION OPTIONS

§303.430

Each statewide system must include written procedures for the timely administrative resolution of complaints through mediation, State complaint procedures, and due process hearing procedures.

- *Mediation.* PSS must make available to parties to disputes involving any matter under this part the opportunity for mediation that meets the requirements in § 303.431.
- *State complaint procedures.* PSS has adopted written State complaint procedures to resolve any State complaints filed by any party regarding any violation of this part that meet the requirements in §§ 303.432 through 303.434.
- *Due process hearing procedures.* PSS has adopted the Part B Due Process Hearing Procedures with a 45-day timeline for resolving due process complaints with respect to a particular child regarding any matter identified in § 303.421(a) with a 45-day timeline for

Status of a child during the pendency of a due process complaint. During the pendency of any proceeding involving a due process complaint under this section, unless the PSS and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents. If the due process complaint under the above paragraph involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.

MEDIATION

§303.431

PSS must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

Requirements. The procedures must meet the following requirements:

- The procedures must ensure that the mediation process is voluntary on the part of the parties.
- Is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part C of the Act;
- And is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

CNMI must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.

- PSS must select mediators on a random, rotational, or other impartial basis.
- PSS must bear the cost of the mediation process, including the costs of meetings
- Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
- If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that and states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding
- Is signed by both the parent and a representative of the lead agency who has the authority to bind such agency.
- A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.
- Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

Impartiality of Mediator. An individual who serves as a mediator under this part;

- May not be an employee of the lead agency or an EIS provider that is involved in the provision of early intervention services or other services to the child; and
- Must not have a personal or professional interest that conflicts with the person's objectivity.
- A person who otherwise qualifies as a mediator is not an employee of a lead agency or an early intervention provider solely because he or she is paid by the agency or provider to serve as a mediator.

STATE COMPLAINT PROCEDURES

STATE COMPLAINT PROCEDURES

The CNMI has adopted the Part B Due Process Hearing Procedures Under Section 615 of the Act

Difference Between Due Process Hearing Complaint and CNMI Complaint Procedures

The regulations for Part B of IDEA set forth separate procedures for **CNMI** complaints and for due process complaints and hearings. As explained below, any individual or organization may file a **CNMI** complaint alleging a violation of any Part C requirement by the **lead agency**, **PSS**, or any other public agency. Only you or the **PSS** may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or early intervention services of an infant or toddler with a disability. While staff of the **PSS** generally must resolve a **CNMI** complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial due process hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the PSS's request. The **CNMI** complaint and due process complaint, resolution and hearing procedures are described more fully below.

ADOPTION OF STATE COMPLAINT PROCEDURES

§303.432

PSS has adopted written procedures for:

- Resolving any complaint, including a complaint filed by an organization or individual from another **CNMI**;
- The filing of a complaint with the **PSS**;
- Widely disseminating the **CNMI** complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

Remedies for Denial of Appropriate Services. In resolving a complaint in which the PSS has found a failure to provide appropriate services, the PSS, pursuant to its general supervisory authority under part C of the Act, must address:

- The failure to provide appropriate services, including corrective actions

appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and

- Appropriate future provision of services for all infants and toddlers with disabilities and their families.

MINIMUM STATE COMPLAINT PROCEDURES

§303.433

Time Limit; Minimum Procedures. PSS must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 303.434 to;

- Carry out an independent on-site investigation, if the PSS determines that an investigation is necessary;
- Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- Provide the PSS, public agency, or EIS provider with an opportunity to respond to the complaint, including, at a minimum, at the discretion of the PSS, a proposal to resolve the complaint; and
- An opportunity for a parent who has filed a complaint and the PSS, public agency, or EIS provider to voluntarily engage in mediation, consistent with §§ 303.430(b) and 303.431;
- Review all relevant information and make an independent determination as to whether the PSS, public agency, or EIS provider is violating a requirement of part C of the Act or of this part; and
- Issue a written decision to the complainant that addresses each allegation in the complaint and contains; Findings of fact and conclusions; and the reasons for the PSS final decision.

Time extension; Final Decision; Implementation. The PSS procedures described in the above paragraph also must;

Permit an extension of the time limit only if exceptional circumstances exist with respect to a particular complaint; or the parent (or individual or organization, if mediation is available to the individual or organization under State procedures) and the PSS, public agency or EIS provider involved agree to extend the time to engage in and

Include procedures for effective implementation of the PSS's final decision, if needed, including technical assistance activities; Negotiations; and Corrective actions to achieve compliance.

Complaints Filed Under this Section and Due Process Hearings Under § 303.430(d):

If a written complaint is received that is also the subject of a due process hearing under § 303.430(d), or contains multiple issues of which one or more are part of that

hearing, the CNMI 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 a part of the due process hearing must be resolved using the time limit and procedures described in paragraphs above of this section.

If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue; and the PSS must inform the complainant to that effect. A complaint alleging a PSS, public agency, or EIS provider's failure to implement a due process hearing decision must be resolved by the PSS.

FILING A COMPLAINT

§303.434

An organization or individual may file a signed written complaint under the procedures described in §§ 303.432 and 303.433. The complaint must include—

- A statement that the PSS, public agency, or EIS provider has violated a requirement of part C of the Act;
- The facts on which the statement is based;
- The signature and contact information for the complainant; and

If alleging violations with respect to a specific child—

- The name and address of the residence of the child;
- The name of the EIS provider serving the child;
- A description of the nature of the problem of the child, including facts relating to the problem; and
- 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 a violation that occurred not more than one year prior to the date that the complaint is received in accordance with § 303.432. The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the PSS.

FILING A DUE PROCESS COMPLAINT

§303.440

A parent, EIS provider, or the PSS may file a due process complaint on any of the matters described in § 303.421(a), relating to the identification, evaluation, or placement of a child, or the provision of early intervention services to the infant or toddler with a disability and his or her family under part C of the Act.

The due process complaint must allege a violation that occurred not more than two years before the date the parent or EIS provider knew, or should have known, about the alleged action that forms the basis of the due process complaint, or, if the CNMI has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in § 303.443(f) apply to the timeline in this section.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

- The *PSS* specifically misrepresented that it had resolved the issues identified in the complaint; **or**
- The *PSS* withheld information from you that it was required to provide you under Part B of the IDEA.

Information for Parents. The *PSS* must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, **or** if you or the *PSS* file a due process complaint.

Timeline for Resolution. The *PSS* adopted a 45-day timeline, subject to § 303.447(a), for the resolution of due process complaints and must specify in its written policies and procedures under § 303.123 and in its prior written notice under § 303.421, the specific timeline it has adopted.

DUE PROCESS COMPLAINT

§303.441

In order to request a hearing, you or the *PSS* (or your attorney or the *PSS*'s attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential. You or the *PSS*, whichever one filed the complaint, must also provide the *PSS* with a copy of the complaint.

Content of the Complaint:

The due process complaint must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the EIS provider servicing the child;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. 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 EIS provider serving the child;

6. (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
7. (6) A proposed resolution of the problem to the extent known and available to the party at the time.

Notice Required Before a Hearing on a Due Process Complaint: You or the PSS may not have a due process hearing until you or the PSS (or your attorney or the PSS's attorney), files a due process complaint that includes the information listed above.

Sufficiency of Complaint: In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the PSS) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification the receiving party (you or the PSS) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the PSS in writing immediately.

Complaint Amendment: You or the PSS may make changes to the complaint only if:

1. The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described below; or
2. By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the PSS) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

PSS Response to a Due Process Complaint: If the PSS has not sent a prior written notice to you, as described under the heading *Prior Written Notice*, regarding the subject matter contained in your due process complaint, the PSS must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why the PSS or EIS provider proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's IFSP Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the PSS or EIS provider used as the basis for the proposed or refused action; and

4. A description of the other factors that are relevant to the *PSS's* or EIS provider proposed or refused action.

Providing the information in items 1-4 above does not prevent the *PSS* from asserting that your due process complaint was insufficient.

Other Party Response to a Due Process Complaint: Except as provided under the sub-heading immediately above, *PSS response to a due process complaint*, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

Model Forms: The *PSS* must develop model forms to help you file a due process complaint and a *CNMI* complaint. However, you or *PSS* may not require you to use these model forms. In fact, you can use this form or another appropriate model form, so long as it contains the required information for filing a due process complaint or a *CNMI* complaint.

RESOLUTION PROCESS

§303.442

Resolution Meeting: Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the *PSS* must convene a meeting with you and the relevant member or members of the individualized family service plan team who have specific knowledge of the facts identified in your due process complaint. The meeting:

1. Must include a representative of the *PSS* who has decision-making authority on behalf of the *PSS*; and
2. May not include an attorney of the *PSS* unless you are accompanied by an attorney.

You and the *PSS* determine the relevant members of the IEP Team to attend the meeting. The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the *PSS* has the opportunity to resolve the dispute. The resolution meeting is not necessary if:

1. You and the *PSS* agree in writing to waive the meeting; or
2. You and the *PSS* agree to use the mediation process, as described under the heading ***Mediation***.

Resolution Period: If the *PSS* has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final decision begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and the *PSS* have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If after making reasonable efforts and documenting such efforts, the *PSS* is not able to obtain your participation in the resolution meeting, the *PSS* may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the *PSS*'s attempts to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and
3. Detailed records of visits made to your home or place of employment and the results of those visits.

If the *PSS* fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint or fails to participate in the resolution meeting, you may ask a hearing officer to order that the 45-calendar-day due process hearing timeline begin.

Adjustments to the 30-Calendar-Day Resolution Period: If you and the *PSS* agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the *PSS* agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If you and the *PSS* agree to use the mediation process, at the end of the 30-calendar-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the *PSS* withdraws from the mediation process, then the 45-calendar-day timeline for the due process hearing starts the next day.

Written Settlement Agreement: *If a resolution to the dispute is reached at the resolution meeting, you and the PSS must enter into a legally binding agreement that is:*

1. Signed by you and a representative of the *PSS* who has the authority to bind the *PSS*; and
2. Enforceable in any *CNMI* court of competent jurisdiction (a *CNMI* court that has authority to hear this type of case) or in a district court of the United States or by the *PSS*, if your *CNMI* has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

Agreement Review Period: If you and the *PSS* enter into an agreement as a result of a resolution meeting, either party (you or the *PSS*) may void the agreement within 3 business days of the time that both you and the *PSS* signed the agreement.

IMPARTIAL DUE PROCESS HEARING

§303.443

CNMI's due process system is a one-tier due process system. The *PSS* is the lead agency responsible for convening due process hearings, and an appeal from a due process hearing decision is directly to a court. Whenever a due process complaint is filed, you or the *PSS* involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections.

Impartial Hearing Officer

At a minimum, a hearing officer:

1. Must not be an employee of the lead agency, *PSS*, the *EIS provider involved in the early intervention services or the care of the infant or toddler*. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of the IDEA, and Federal and *CNMI* regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and *CNMI* courts; and
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

PSS must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

Subject Matter of Due Process Hearing: The party (you or the *PSS*) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Timeline for Requesting a Hearing: You or the *PSS* must request an impartial hearing on a due process complaint within two years of the date you or the *PSS* knew or should have known about the issue addressed in the complaint.

Exceptions to the timeline: The above timeline does not apply to you if you could not file a due process complaint because:

1. The *PSS* specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; or

2. The PSS withheld information from you that it was required to provide to you under Part B of the IDEA.

HEARING RIGHTS

§303.444

Any party to a due process hearing or an appeal, has the right to;

1. Be accompanied and advised by counsel and be accompanied by individuals with special knowledge or training regarding the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined by *CNMI* law;
2. Present evidence and confront, cross-examine, and require 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 your option, electronic, word-for-word record of the hearing; **and**
5. Obtain written, or, at your option, electronic findings of fact and decisions.

Additional Disclosure of Information: *At least five business days prior to a due process hearing, you and the PSS must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the PSS intend to use at the hearing.*

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parental Rights at Hearings: *You must be given the right to:*

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

HEARING DECISIONS

§303.445

Decision of Hearing Officer. Subject to the paragraph above, a hearing officer's determination of whether an infant or toddler was appropriately identified, evaluated, or placed, or whether the infant or toddler with a disability and his or her family were appropriately provided early intervention services under part C of the Act, must be

based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that a child was not appropriately identified, evaluated, placed, or provided early intervention services under part C of the Act only if the procedural inadequacies;

- Impeded the child's right to identification, evaluation, and placement or provision of early intervention services for the child and that child's family under part C of the Act;
- Significantly impeded the parent's opportunity to participate in the decision-making process regarding identification, evaluation, placement or provision of early intervention services for the child and that child's family under part C of the Act; or
- Caused a deprivation of educational or developmental benefit.
- Nothing in paragraph (a) of this section precludes a hearing officer from ordering the lead agency or EIS provider to comply with procedural requirements under §§ 303.400 through 303.449.

Construction Clause: Nothing in §§ 303.440 through 303.445 affects the right of a parent to file an appeal of the due process hearing decision with the lead agency under § 303.446(b), IF the lead agency level appeal is available.

Separate Due Process Complaint. Nothing in §§ 303.440 through 303.449 precludes a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Findings and Decisions to General Public. The PSS, after deleting any personally identifiable information, must make the findings and decisions available to the public.

FINALITY OF DECISION; APPEAL; IMPARTIAL HEARING

§303.446

Finality of Hearing Decision

A decision made in a due process hearing is final, except that any party involved in the hearing (you or the PSS) may appeal the decision by bringing a civil action, as described below.

TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS

§303.447

The PSS must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings **or**, as described under the sub-heading ***Adjustments to the 30-calendar-day resolution period***, not later than 45 calendar days after the expiration of the adjusted time period:

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

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party.

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

CIVIL ACTION INCLUDING TIME PERIOD IN WHICH TO FILE THOSE ACTIONS

§303.448

Any party (you or the *PSS*) who does not agree with the findings and decision in the due process hearing) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a *CNMI* court of competent jurisdiction (a *CNMI* court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

Time Limitation: The party (you or the *PSS*) bringing the action shall have 90 calendar days from the date of the decision of the hearing officer to file a civil action.

Additional Procedures: In any civil action, the court:

- Receives the records of the administrative proceedings;
- Hears additional evidence at your request or at the *PSS*'s request; **and**
- Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Jurisdiction of District Courts: The district courts of the United States have authority to rule on actions brought under Part B of the IDEA without regard to the amount in dispute.

Rule of Construction: Nothing in Part C of the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of the IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of the IDEA. This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under the IDEA (i.e., the due process complaint, resolution meeting, and impartial due process hearing procedures) before going directly into court.

Attorney's Fee: In any action or proceeding brought under Part C of the IDEA, if you prevail, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you. In any action or proceeding brought under Part C of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing *PSS* or *PSS*, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; or (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

In any action or proceeding brought under Part C of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing **PSS** to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding.

Award of Fees: A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part C of the IDEA for services performed after a written offer of settlement to you if:
 - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or CNMI-level review, at any time more than 10 calendar days before the proceeding begins;
 - b. The offer is not accepted within 10 calendar days; and
 - c. The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

3. Fees may not be awarded relating to any meeting of the individualized family service plan team unless the meeting is held as a result of an administrative proceeding or court action.

A resolution meeting, as described under the heading **Resolution Meeting**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under Part C of the IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; **or**
4. The attorney representing you did not provide to the *PSS* the appropriate information in the due process request notice as described under the heading ***Due Process Complaint***.

However, the court may not reduce fees if the court finds that the *PSS* unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part C of the IDEA.

PRIOR WRITTEN NOTICE

Prior Written Notice

The *CNMI PSS* must give you written notice (provide you certain information in writing) within a reasonable time before *PSS*:

1. Proposes to initiate or to change the identification, evaluation, or placement of their infant or toddler or the provision of early intervention services to the infant or toddler with a disability and that infants' or toddlers' family; **or**
2. Refuses to initiate or to change the identification, evaluation, or placement of the infant or toddler with a disability or the provision of early intervention services to your infant or toddler with a disability and that infants' or toddler's family.

Content of Notice

The written notice must be in sufficient detail to inform you about:

1. The action that is being *CNMI PSS* proposed or refused;
2. Explain why *CNMI PSS* is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report *CNMI PSS* used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part C of the IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that *CNMI PSS* is proposing or refusing is not an initial referral for evaluation;

6. Include resources for you to contact for help in understanding Part C of the IDEA;
7. Describe any other choices that your child's individualized family service plan (IFSP) Team considered and the reasons why those choices were rejected; and
8. Provide a description of other reasons why *CNMI PSS* proposed or refused the action.

Notice in Understandable Language

The notice must be:

2. Written in language understandable to the general public; and
3. Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, *CNMI PSS* must ensure that:

3. The notice is translated for you orally by other means in your native language or other mode of communication;
4. You understand the content of the notice; and
3. There is written evidence that 1 and 2 have been met.