



Massachusetts Early Intervention and You

Your Notice of Family Rights and Procedural Safeguards

As a parent, you are your child's most important teacher.

From the time you are referred to Early Intervention until you leave the program, you are part of your child's team along with Early Intervention staff. As a member of the team, you offer information that helps others understand what is important to your family and what you would like to see for your child. Early Intervention staff offer their training and experience to provide activities to support your child's development.

Together, Early Intervention staff, parents, and other people you choose make up the Individualized Family Service Plan (IFSP) team. Parents are equal members of the IFSP team. The IFSP team decides on the supports, services and activities that will meet the outcomes (goals) you have for your child.

As a parent of a child referred or receiving Early Intervention (EI) services, you have rights and safeguards (called "procedural safeguards") that protect your child and family's interests. Federal law and the Massachusetts Department of Public Health (DPH) require procedural safeguards and parent rights in Early Intervention. The federal law for Early Intervention is the Individuals with Disabilities Education Act (known as "IDEA"). Procedural safeguards are important because they make certain families have complete information, have their privacy protected and are asked permission before activities or services take place. Having information that is complete and understandable helps families make decisions about how they receive services.

There are steps the Early Intervention program must take while you receive service. These include explaining your rights, giving you information in a way you understand, and respecting you as a parent by asking for your permission in writing.

This notice is about your family rights and procedural safeguards. Please take a few minutes to read it. The staff at Early Intervention is happy to answer any questions. If you have questions the Early Intervention team cannot answer, you can contact the Department of Public Health at the number listed at the end of this notice.

Timelines, Procedures and Standards - EI programs must follow timelines and steps while you are in the program. There are timelines to complete an evaluation to determine eligibility, develop and review an IFSP and begin services once you give consent. These timelines and steps are in the Early Intervention Operational Standards. See the link on the last page of this notice or call DPH for a copy.

Being Informed – Prior Written Notice/Native Language - It is important to understand what Early Intervention (EI) services are and how they work. Having information in writing is one way families can make decisions about their EI services. EI programs must give you information in writing before proposing, changing, or refusing to provide any EI service (for example, completing an evaluation, changing a service, or having an IFSP meeting). The written information must include the activity that is being proposed by the program and the reason for the activity. The program must also provide you with the rights and safeguards including filing a complaint, requesting mediation or a due process hearing. The notice must be provided in your native language unless clearly not feasible to do so.

Giving Permission – Parent Consent - Early Intervention services are voluntary. You decide if your child and family accept or decline the services proposed by the program. The program must ask for your written permission (consent) to make sure you agree to the activity. The EI staff will answer any questions you have and explain what will happen if you do not give consent. Parents must give consent for evaluations and assessments, any EI service, to have their health insurance (including MassHealth) pay for services and, in general, to release information from their child's record. A parent may choose to consent to some services and not consent to

others. Only the services you give consent to will be provided. Parents also have the right to withdraw their consent after they have provided it.

Paying for Services – Most private insurance and MassHealth pay for EI services. The program must ask for your consent to have your public or private insurance pay for IFSP services. If you provide your consent, you may withdraw it at any time. Your consent allows the EI program to release personally identifiable information to the insurance company to pay for services. You are not required to provide consent or obtain insurance (including MassHealth) to receive Early Intervention services. The program must ask for your consent any time there is a change in Early Intervention IFSP service that will be billed to insurance.

DPH pays for Early Intervention services not covered by insurance. No child will be denied service if they do not have insurance to cover the cost of Early Intervention IFSP services. All of the options to address a parent's concerns about their child's service (see **When You Disagree or Have a Complaint**) also apply to the use of insurance.

Privacy and Your Child's Record – *Confidentiality*

The EI program will keep a record that includes the Individualized Family Service Plan (IFSP), progress notes, and information from other providers (with your consent) that helps to develop an IFSP. Each Early Intervention program must have confidentiality policies that meet the state and federal requirements for children who are referred or eligible for Early Intervention. The information is confidential (private) with some exceptions that are allowed by state or federal law. Some of these exceptions include releasing limited information to:

- Your school district if your child could be eligible for special education services at age three. The program may release your name, your child's name, date of birth, and address. You can choose not to have this information released by opting out. The program must ask for your written permission (consent) to release any other information from your child's record (such as evaluations, assessments or IFSPs).
- Other Department of Public Health (DPH) programs if there is a public health emergency (such as an outbreak of a contagious disease) or to investigate public health related issues.
- The Department of Children and Families (DCF) to file a report of suspected abuse or neglect and during the investigation period.
- Staff from DPH or the Federal Department of Education who monitor and fund EI services.
- Comply with a lawfully issued court order. The program will attempt to contact you before the information is released.

The Department of Public Health collects information about children who receive EI services. The information shows children are eligible, arranges for payment, and provides a way for DPH to evaluate and coordinate services. Information that does not identify you or your child personally may be used in reports for monitoring and research, the state legislature and the Federal Department of Education to fund the program. You may ask to see a list of the DPH staff who works with this information.

Reviewing Your Child's Record – *Examining Records*

As long as both parents have legal custody of their child, both parents have the right to see what is in their child's record. Parents who have legal custody may see their child's record unless there is a court order, or other legal document that does not allow a parent to see the record or make decisions about their child's EI services.

You or someone you choose can see your child's record and have it explained. If you ask to see your child's record, within five (5) days the program must give you a list of the records they have and where they are kept. The program must let you to see your child's record within 10 days of your request (five (5) days if the request is for an IFSP meeting or a due process hearing).

If there is information in the record you believe is not accurate, misleading or violates your child's privacy, you can ask to have it changed or removed. The program must respond to your request, in writing within 30 days of their decision. If the program does not agree with you, they must notify you in writing and explain your right to

ask for a hearing. If you ask for a hearing, a hearing officer will make a written decision about the disagreement within 60 calendar days. If the hearing officer agrees that the information is inaccurate, misleading or violates the privacy of your child, the program will change the information. If the hearing officer does not agree with you, you may include your own statement about the information and have it included in your child's record. The program will keep your statement as part of the record. The program must send out your statement with the part of the record you do not agree with if you give consent to release the information from your child's record.

Other information about your child's record:

The EI program will:

- Keep a list of staff that has access to your information.
- Keep a list of anyone outside the program who has looked at your child's record including the name of the person, the date, and the reason or purpose for the review.
- Provide confidentiality training to any staff that has access to an EI record.
- Keep a list of all records that were released and to whom they were released.
- Provide an initial copy of the child's record free of charge. Copies of each evaluation, assessment, IFSP and IFSP Review pages are also provided free of charge.
- If you want additional copies, the program may charge a fee unless the cost prevents you from having access to your child's record. The EI program may not charge you to search for or retrieve a record.
- The EI program will keep your child's record for seven (7) years after you leave the program. After seven years, the record may be destroyed.

Surrogate Parent: If a child is a ward of the state and there is no person to act in the role of a parent (for example, a foster parent, guardian, or step-parent) who is willing to make decisions about a child's Early Intervention services, the DPH or family court will assign a "surrogate parent". A surrogate parent does not work for the EI program, DPH or any other state agency that provides service to the child or family. The surrogate parent must have knowledge of Early Intervention services and may not have any personal or professional interests that conflict with the interests of the child. A surrogate parent has all the rights of a parent to make decisions about the child's EI services.

When You Disagree or Have a Complaint – *Dispute Resolution, Mediation, Due Process Hearing*

If you have a concern or a question, please bring it to your EI program right away. Sometimes, parents and the EI staff have different ideas about a child's Early Intervention service. Talk with the other members of your IFSP team, your service coordinator, or the director of the EI program. Parents can ask to have an IFSP meeting at any time to review the IFSP; talk about what is working well or what may need to change. Talking openly can solve most disagreements.

If you have a complaint about your EI services or program, there are ways to have your concerns handled. A parent may use one or more of these options if their concern cannot be worked out with the EI program.

Filing a Complaint: A parent, person, or an organization may file a complaint if they believe the program has violated a child or parent's rights. For example, a parent may file a complaint if an Early Intervention program is not providing IFSP services, if changes in IFSP services were made without consent, if a program did not meet timelines or if they disagree with something in their child's record. A complaint must be in writing, signed and filed within one (1) year of when the alleged violation happened. The complaint needs to include a description of the problem and a proposal to resolve the complaint if known. A copy of the complaint must be sent to the EI program at the same time it is filed with DPH.

DPH investigates all complaints of alleged violation(s) of the IDEA. A report is sent to the person or organization who filed the complaint and the program within 60 calendar days from when it DPH receives the written complaint unless there are reasons to extend the timeline (for example, if the parent and EI program agree to mediation to try to resolve the disagreement). The report includes DPH's reasons and conclusions about each alleged violation(s).

If a parent files a complaint and asks for a due process hearing at the same time, DPH can only investigate the issue(s) that are not part of the hearing. A hearing officer will decide the issue(s) that are part of the due process hearing. The issue cannot be part of a future complaint filed by the same parent.

Mediation: Mediation is a voluntary, informal way to help solve disagreements between parents and an Early Intervention program. Parents or an EI program may ask for mediation when there are different opinions or views about the child's EI experience. The mediator does not work for any agency or program that provides EI services. The mediator does not take sides or make a decision about the disagreement. The mediator will work with parents and the EI program to talk about the issue(s), develop new ideas, and help both sides create their own agreements. If there is agreement on an issue, it is written in a legally binding mediation agreement. If there is no agreement, the two sides can continue to try to work together or ask for a due process hearing.

Mediation is confidential. The discussion that happens during the mediation meeting may not be used as evidence at a due process hearing or civil proceeding. DPH will provide the mediator free of charge. The mediator will schedule the mediation within 14 calendar days at a time and location convenient to both parents and the EI program.

A request for mediation needs to be made in writing to DPH. Any services for which a parent provided consent on an IFSP will be provided during this time. Mediation will not delay a parent's right to a due process hearing or the hearing timelines.

Due Process Hearing: A due process hearing is a formal process where an impartial person (a hearing officer) makes a decision about a disagreement. DPH provides the hearing officer free of charge. A parent may ask for a hearing within two (2) years of the action or disagreement about their child's eligibility, evaluation, type or amount of services offered or if there is something in their child's record a parent believes is inaccurate, misleading or in some way violates the privacy of the child or family. The hearing officer will make a decision based on the testimony of witnesses and evidence. Parents have the right to present evidence, call and cross examine witnesses, not allow evidence to be heard that was not given to the parent at least five (5) days before the hearing, and receive a written or electronic transcript of the hearing. Parents have the right to have an attorney, advocate, or anyone else at the hearing. DPH will provide parents with a list of free or low-cost advocates and attorneys.

Any services that were agreed to in writing will be provided during the hearing process. The hearing officer will send a written decision within 30 calendar day from when DPH receives the written request for a hearing unless an extension is granted. If you do not agree with the hearing officer's decision, you may appeal your decision in state or federal court.

If you have any questions about your rights, please talk to your Service Coordinator, Program Director or contact the Department of Public Health.

The **Massachusetts Early Intervention Operational Standards** are found at <https://www.mass.gov/doc/early-intervention-operational-standards/download> or by calling Kathleen Amaral 508-454-2007 or by e-mail at Kathleen.a.amaral@mass.gov

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