

**INFANT/TODDLER AND  
FAMILY RIGHTS:  
BIRTH TO THREE  
IN SOUTH DAKOTA**



**UNDER THE IDEA, PART C PROGRAM  
FOR EARLY INTERVENTION SERVICES**

**Department of Education**

Revised July 2014  
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**Family Rights  
Procedural Safeguards Notice**

As a result of the December 3, 2004 amendments to the Individuals with Disabilities Education Act (IDEA 2004), parental rights in early intervention have been revised. Final regulations were issued on September 28, 2011 by the U.S. Department of Education to implement the new law. In addition, state rules in Article 24:14 also apply to the Birth to Three Program.

Please review these rights carefully and if you have questions or need assistance in understanding these rights or the provisions of the state's early intervention rules, contact any of the organizations listed at the end of this document.

It is the policy of the South Dakota Department of Education to provide services to all persons without regard to race, color, creed, religion, sex, disability, ancestry, or national origin in accordance with state law (SDCL 20-13) and federal law (Title VI of Civil Rights Act of 1964, the Rehabilitation Act of 1973 as amended, and the Americans with Disabilities Act of 1990).

## TABLE OF CONTENTS

Forward .....	ii
Introduction .....	1
Parental Consent .....	3
Prior Written Notice.....	5
Examination of Records.....	6
Confidentiality of Information.....	7
Dispute Resolution Options .....	15
Surrogate Parents .....	34
Individualized Family Service Plan Flow Chart.....	36
Glossary .....	37
For More Information .....	40

## FORWARD

Infant/Toddler and Family Rights: Birth to Three in South Dakota describes your child's and family's rights, as defined by Part C of the federal law - Individuals with Disabilities Education Act (IDEA). IDEA includes provisions for early intervention services for eligible children starting at birth.

This document is an official notice of your rights under federal regulation. Some terms may be unfamiliar to you or used differently. For this reason, words that are ***bold and italicized*** are defined in the glossary.

The service coordinator working with your family can suggest additional materials to help you understand your rights. He/she can also suggest ways that you and other family members can be partners with professionals to help meet the developmental needs of your child.

## INTRODUCTION

The Part C system, Birth to Three in South Dakota, is designed with the intent to maximize family involvement and provide explicit parental consent in each step of the process from referral through service delivery. Ensuring that *parents* maintain a leadership role in services to their child necessitates the opportunity for *parents* to be informed about the safeguards which have been established to protect them and their child. Participation in the early intervention system for infants and toddlers is voluntary for you and your family.

The general rights you have as a *parent* include:

- The right to choose to participate or not in the Birth to Three program in South Dakota;
- The right to participate as a member of the team working with your child to the extent you wish to participate;
- The right to receive a full explanation of any *screening, evaluations, assessments*, services and changes considered for your child, in the language you speak or in your mode of communication to the extent feasible;
- The right to refuse services without jeopardizing the services you do want;
- The right to a timely, *multidisciplinary evaluation and assessment* prior to the initial IFSP meeting;
- The right, if eligible under Part C, to appropriate early intervention services for your child and family as addressed in an *Individualized Family Service Plan (IFSP)*;

## Family Rights      BIRTH TO THREE

- The right to **screening, evaluation, assessment, IFSP** development, service coordination and procedural safeguards at no cost.
- The right not to use your public benefits or insurance or private insurance to pay for early intervention services;
- The right to receive timely prior written notice before a change is proposed or refused in the identification, **evaluation**, or placement of your child, or in the provision of services to your child or family;
- The right to receive services in your child's **natural environment** to the extent appropriate for your child;
- The right to have all **personally identifiable** information treated as confidential; and
- The right to file a complaint, participate in mediation, and request an impartial hearing to resolve **parent/provider** disagreements.

In addition to the general rights noted above, you are entitled to be notified of specific procedural safeguards under the Birth to Three program. These rights include: Parental Consent, Prior Written Notice, Examination of **Records**, Confidentiality of Information; Dispute Resolution Options; and Surrogate Parents. Each of these safeguards are described below.

## PARENTAL CONSENT

Consent means that: (1) you have been fully informed of all information relative to the activity for which consent is sought, in your *native language* or other mode of communication; (2) you understand and agree in writing to the carrying out of the activity for which your consent is sought, and the consent form describes that activity and lists the *records* (if any) that will be released and to whom they will be released; (3) you understand that the granting of consent is voluntary on your part and may be revoked at any time; and (4) if you revoke consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked.)

Your written consent must be obtained before:

1. Administering screening procedures that are used to determine whether your child is suspected of having a disability;
2. All evaluations and assessments of your child are conducted;
3. Early intervention services provided to your child;
4. Public benefits or insurance or private insurance is used; and
5. Disclosure of personally identifiable information.

If you do not give consent under 1-3 above, an early intervention program consultant shall make reasonable efforts to ensure that you:

## Family Rights      BIRTH TO THREE

1. Are fully aware of the nature of the *evaluation* and *assessment* of your child or the services that would be available; and
2. Understand that your child will not be able to receive the *evaluation* and *assessment* or services unless consent is given.

The program may not use the due process hearing procedures under Part C or Part B of IDEA to challenge your refusal to provide any consent that is required under this section.

In addition, as the *parent* of a child eligible under the Birth to Three program, you may determine whether your child, or other family members, will accept or decline any early intervention services under this program at any time in accordance with state law. You also may decline such a service after first accepting it, without jeopardizing other early intervention services under this program.

As the parent of a child referred under Part C, you 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. (See Section on Confidentiality of Information)

## PRIOR WRITTEN NOTICE

Prior written notice must be provided to you five days before an early intervention program consultant and/or agency proposes, or refuses, to initiate or change the identification,

## Family Rights      BIRTH TO THREE

*evaluation*, or placement of your child, or the provision of appropriate early intervention services to your child and your family.

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

1. The action that is being proposed or refused;
2. The reasons for taking the action; and
3. All procedural safeguards that are available under this program, including a description of mediation, how to file a State complaint, and a due process complaint, and any timelines under those procedures.

The notice must be:

1. Written in language understandable to the general public and provided in your *native language* or other mode of communication used by you, unless it is clearly not feasible to do so.
2. If your *native language* or other mode of communication is not a written language, the early intervention program consultant shall take steps to insure that:
  - (a) The notice is translated orally or by other means to you in your *native language* or other mode of communication;
  - (b) You understand the notice; and
  - (c) There is written evidence that the requirements of this section have been met.
3. If you are deaf, blind, unable to read, or have no written language, the mode of communication must be that normally used by you (such as sign language, braille, or oral communication).

## **EXAMINATION OF RECORDS**

Once your child is referred to, or receives services under Part C, you are afforded the opportunity to inspect and review all early intervention records about your child and your family that are collected, maintained, or used under Part C, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving your child, or any part of your child's early intervention record under Part C.

This applies from the point in time when your child is referred for early intervention services under Part C until the participating agency is no longer required to maintain or no longer maintains that information under applicable Federal and South Dakota laws.

The program must disclose to the State Special Education Program and the school district where your child resides, in accordance with transition requirements, the following personally identifiable information under Part C:

- Your child's name.
- Your child's date of birth.
- Your contact information (including your name, addresses, and telephone numbers).

The information described above is needed to enable the State Special Education Program, as well as the school district, to identify all children potentially eligible for services under Part B of IDEA.

The program must make available to you an initial copy of your child's early intervention record, at no cost to you.

### **CONFIDENTIALITY OF INFORMATION**

The program shall give notice when a child is referred under Part C of IDEA that is adequate to fully inform parents about the requirements in this chapter, including:

1. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information, including the sources from whom information is gathered, and the uses to be made of the information;
2. A summary of the policies and procedures that contractors and participating agencies shall follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;
3. A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in this chapter; and
4. A description of the extent that the notice is provided in the native languages of the various population groups in the state.

The early intervention program consultant and participating agencies must provide you the opportunity to inspect and

## Family Rights      BIRTH TO THREE

review any *early intervention records* relating to your children which are collected, maintained or used by the early intervention program consultant and/or agency under Part C. The early intervention program consultant or agency must respond to a request without unnecessary delay and before any meeting regarding an *IFSP* or hearing relating to identification, *evaluation*, placement of your child, or provision of appropriate early intervention services and in no case more than ten days after the request has been made.

The right to inspect and review *early intervention records* includes:

1. The right to a response from the early intervention program consultant or agency to reasonable requests for explanations and interpretations of the *early intervention record*;
2. The right to request that the early intervention program consultant or agency provide *early intervention records* containing the information if failure to provide those copies would effectively prevent you from exercising the right to inspect and review the *early intervention records*; and
3. The right to have someone who is representing you inspect and review the *early intervention record*.

An early intervention program consultant or agency may presume that you have the authority to inspect and review *early intervention records* relating to your child unless it has been provided documentation that you do not have the authority under applicable State law governing such matters as custody, foster care, guardianship, separation and divorce.

## Family Rights      BIRTH TO THREE

Each *participating agency* and early intervention program consultant shall keep a record of parties obtaining access to *early intervention records* collected, obtained, or used under this part (except access by *parents* and authorized employees of the *participating agency* and early intervention program consultant), 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 record*.

If any *early intervention 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.

Each early intervention program consultant and/or *participating agency* shall provide you, on request, a list of the types and locations of *early intervention records* collected, maintained, or used by the agency.

An early intervention program consultant and/or *participating agency* may charge a fee for copies of *early intervention records* which are made for *parents* under this part if the fee does not effectively prevent you from exercising your right to inspect and review those *early intervention records*. An early intervention program consultant and/or *participating agency* may not charge a fee to search for or to retrieve information under Part C.

A participating agency must provide to you at no cost, a copy of each evaluation, assessment of your child, family assessment, and IFSP as soon as possible after each IFSP meeting.

If you believe that information in *early intervention records* collected, maintained, or used under Part C is inaccurate or

## Family Rights      BIRTH TO THREE

misleading, or violates the privacy or other rights of your child or you, you may request the early intervention program consultant or *participating agency* which maintains the information to amend the information.

1. The *participating agency* or early intervention program consultant decides whether to amend the information in accordance with the request, within a reasonable period of time, you will be informed of receipt of the request.
2. If the *participating agency* or early intervention program consultant decides to refuse to amend the information in accordance with the request, you will be informed of the refusal and be advised of the right to a hearing.

The *participating agency* or the early intervention program consultant must, on request, provide you with the opportunity for a hearing to challenge information in your child's early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child or you. You may request a due process hearing provided that such hearing procedures meet the requirements of the hearing procedures in FERPA or may request a hearing directly under the State's Part C procedures.

At a minimum, a contractor's or *participating agencies* hearing procedures under FERPA must include the following elements:

1. The hearing must be held within 30 days after the contractor or *participating agency* receives the request, and the parent of the child shall be given notice of the date, place, and time five days in advance of the hearing;

## Family Rights      BIRTH TO THREE

2. The hearing may be conducted by any party who does not have a direct interest in the outcome of the hearing;
3. The parent of the child shall be afforded a full and fair opportunity to present evidence relevant to the issues raised and may be assisted or be represented by individuals of the parent's choice at the parent's own expense, including an attorney;
4. The contractor or *participating agency* shall make its decision in writing within 30 days after the conclusion of the hearing; and
5. The decision of the contractor or *participating agency* shall be based solely on the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

If, as a result of the hearing, an early intervention program consultant or *participating agency* decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child or you, it amends the information accordingly and will inform you in writing.

1. If, as a result of the hearing, the *participating agency* or early intervention program consultant decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child or you, you will be informed of your right to place in the *early intervention records* of your child a statement commenting on the information and setting forth any

## Family Rights      BIRTH TO THREE

reasons for disagreeing with the decision of the early intervention program consultant or *participating agency*.

2. Any explanation placed in the *early intervention records* of your child under this section must:

- (a) be maintained by the early intervention program consultant or *participating agency* as part of the *early intervention records* of the child as long as the *early intervention record* or contested portion (that part of the *early intervention record* with which you disagree) is maintained by the early intervention program consultant or agency; and

- (b) if the *early intervention records* of the child or the contested portion is disclosed by the early intervention program consultant or *participating agency* to any party, the explanation must also be disclosed to the party.

Parental consent must be obtained before *personally identifiable* information is: (a) disclosed to anyone other than authorized representatives, officials, employees or early intervention program consultants or participating agencies collecting, maintaining, or using information under Part C, subject to the paragraph below; or (b) used for any purpose other than meeting a requirement under Part C.

The program or other participating agency may not disclose personally identifiable information, to any party except participating agencies (including the program and contractors) that are part of the State's Part C system without your consent unless authorized to do so under:

## Family Rights      BIRTH TO THREE

1. Transition requirements; or
2. One of the exceptions enumerated in FERPA, where applicable to Part C, which are expressly adopted to apply to Part C through this reference.

The program must provide policies and procedures to be used when you refuse to provide consent under this section (such as a meeting to explain to you how your failure to consent affects the ability of your child to receive services under Part C), provided that those procedures do not override your right to refuse consent under Part C.

Each early intervention program consultant and/or *participating agency* protects the confidentiality of *personally identifiable* information at collection, maintenance, use, storage, *disclosure*, and *destruction* stages.

One official of each early intervention program consultant and/or *participating agency* assumes responsibility for insuring the confidentiality of any *personally identifiable* information.

All persons collecting or using *personally identifiable* information receive training or instruction regarding South Dakota's policies and procedures under IDEA and FERPA.

Each early intervention program consultant and/or *participating agency* maintains, for public inspection, a current listing of the names and positions of those employees within the early intervention program consultant and/or agency who have access to *personally identifiable* information.

## Family Rights      BIRTH TO THREE

The early intervention program consultant and/or agency informs *parents* when *personally identifiable* information collected, maintained, or used under Part C is no longer needed to provide services to the child under Part C of IDEA, the General Education Provisions Act in 20 U.S.C. 1232f, and Education Department General Administrative Regulations at 34 CFR parts 76 and 80.

Subject to the paragraph above, the information must be destroyed at your request. 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.

## DISPUTE RESOLUTION OPTIONS

If you believe the Birth to Three has violated a federal or state regulation, you may file a complaint with the Special Education Program's Part C Coordinator. Upon receiving your written complaint, an investigation will be completed.

If you disagree with an early intervention program consultant and/or agency on the

(1) identification,

(2) *evaluation*,

(3) placement of your child, or

(4) provision of appropriate early intervention services

to your child or family, you have the right to a timely administrative resolution of your concerns.

## Family Rights      BIRTH TO THREE

The administrative resolution process for your concerns may proceed as a complaint, mediation, or impartial due process hearing. Each process to resolve a disagreement has individual procedures that are followed. Please review the procedures and decide which one would work best for your situation.

### **COMPLAINT**

A complaint is a written signed statement by an individual or organization, including a complaint filed by an individual or organization from another state, containing a statement that the state Birth to Three program or a local Birth to Three program has violated a requirement of federal or state statues or regulations that apply to a program and a statement of the facts on which the complaint is based.

The violation in question must have occurred not more than one year before the date that the complaint is received by Birth to Three .

The complaint shall also include:

1. The signature and contact information for the complainant; and
2. If alleging violations with respect to a specific child:
  - (a) The name and address of the residence of the child;
  - (b) The name of the early intervention service provider serving the child;
  - (c) A description of the nature of the problem of the child, including facts related to the problem; and

## Family Rights      BIRTH TO THREE

(d) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

The party filing the complaint shall forward a copy of the complaint to the public agency or nonpublic service provider serving the child at the same time the party files the complaint with the state Birth to Three .

In resolving the complaint in which the state Birth to Three program has found a failure to provide appropriate services, the state Birth to Three program, pursuant to its general supervisory authority under Part C of the IDEA, must address:

1. The failure to provide appropriate services including corrective action appropriate to address the needs of the infant or toddler with a disability and the infant's or toddler's family who is the subject of the complaint such as compensatory or monetary reimbursement.
2. Appropriate future provision of services for all infants and toddlers with disabilities and their families.

The state director of the Part C program appoints a complaint investigation team. The team may conduct an on-site investigation if it determines that one is necessary. The complaint team shall give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

The department, a public agency, or a nonpublic service provider shall have the opportunity to respond to the complaint, including at a minimum:

- (a) At the discretion of the department, a proposal to resolve the complaint; and

## Family Rights      BIRTH TO THREE

(b) An opportunity for a parent who has filed a complaint and the department, a public agency, or a nonpublic service provider to voluntarily engage in mediation consistent with this article.

If corrective action is not completed within the time limit set, including technical assistance and negotiations, the department shall withhold all federal funds applicable to the program until compliance with applicable federal and state statutes and rules is demonstrated by the public agency or a nonpublic service provider.

Documentation supporting the corrective actions taken by a public agency or a nonpublic service provider shall be maintained by the department's Part C program and incorporated into the state's monitoring process.

The complaint team makes a recommendation to the state director of the Part C program, and after reviewing all relevant information, the state director of the Part C program shall determine whether the complaint is valid, what corrective action is necessary to resolve the complaint, and the time limit during which corrective action is to be completed. The state director of the Part C program shall submit a written report of the final decision to all parties involved, including findings of fact, conclusions, and reasons for final decision.

All complaints must be resolved within 60 calendar days after the receipt of the complaint by the state director of the Part C program as stated in this section. An extension of the 60 day time limit may be granted only if exceptional circumstances exist with respect to a particular complaint. The extension may not exceed 30 days in any one instance. In addition, the 60-day time limit may be extended, if the

## Family Rights      BIRTH TO THREE

parent, individual, or organization and the department, a public agency, or a nonpublic service provider involved in the complaint agree to engage in mediation in order to attempt to resolve the issues specified in the complaint.

If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, the state Birth to Three program 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 action must be resolved using the time limit and procedures described in this section.

If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:

1. The hearing decision is binding on that issue; and
2. The state Birth to Three program must inform the complainant to that effect.

A complaint alleging a failure to implement a due process hearing decision must be resolved by the state Birth to Three program.

### **MEDIATION**

Mediation is an effective way to resolve differences between you and the Birth to Three program.

Mediation is free and conducted by someone who is not employed by the program.

## Family Rights BIRTH TO THREE

The state shall ensure that procedures are established and implemented to allow parties to disputes involved in the proposal or refusal to initiate or change the identification, evaluation or placement of the child or the provision of appropriate early intervention services to the child and the child's family, including matters that arise prior to the filing of a due process hearing, to resolve the disputes through a mediation process at any time.

The mediation procedures must ensure that participation is voluntary on the part of the parties. Mediation may not be used to deny or delay the parent's right to a due process hearing or to deny any other rights afforded under Part C of IDEA. It must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. Mediators are selected on a random basis.

The state Birth to Three program shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of appropriate early intervention services. An individual who serves as a mediator may not be an employee of the program or state agency providing services to the child. They must not have a personal or professional conflict of interest that impacts on their objectivity. The state will bear the cost of the mediation process including the cost of meetings described in this section.

A person who otherwise qualifies as a mediator is not an employee of a program or state agency solely because he or she is paid by the state Birth to Three program to serve as a mediator.

Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is

## Family Rights      BIRTH TO THREE

convenient to the parties to the dispute. Mediation is an informal process conducted in a non-adversarial atmosphere. An agreement reached by the parties to the dispute in the mediation must be set forth in a written mediation agreement.

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.

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:

1. 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 arising from that dispute; and
2. Is signed by both the parent and a representative of the program who has the authority to bind such program.

A written, signed mediation agreement under this section is enforceable in any state court of competent jurisdiction or in a district court of the United States.

If you choose not to use the mediation process, the program or a state agency providing services to the child may establish procedures to offer you and to the program an opportunity to meet, at a time and location convenient to you, with a disinterested party, to encourage the use and explain the benefits of the mediation process to you. This party may be under contract with a parent training and information center, community parent resource center

established in the state or with an appropriate alternative dispute resolution entity.

**IMPARTIAL DUE PROCESS HEARINGS**

You, a contractor, or the program may initiate a hearing on any matters relating to the identification, evaluation or placement of your child or the provision of appropriate early intervention services to your child and family.

You, a contractor, or the program must request an impartial hearing on their due process complaint within two years of the date the parent or program knew or should have known about the alleged action that forms the basis of the due process complaint.

The timeline described above does not apply to a parent if the parent was prevented from filing a due process complaint due to:

1. Specific misrepresentations by the program that it had resolved the problem forming the basis of the due process complaint; or
2. The program's withholding of information from the parent that was required under Part C of IDEA to be provided to the parent.

If you are unable to resolve your differences through a resolution session, or the mediation process, a due process hearing will be held. This hearing is a legal process in which both parties present their differing viewpoints to a hearing officer. The hearing officer writes a finding of fact and decision based on the information presented by both parties.

## Family Rights      BIRTH TO THREE

A party, parent or program, may not have a hearing on a due process complaint or engage in a resolution session until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this section.

A due process complaint notice may be submitted by a parent, program, or an attorney representing either party. It must be submitted to the state Birth to Three program in writing. The due process complaint notice must include:

1. The name of the child;
2. The address of the residence of the child;
3. The name of the program providing early intervention services to the child;
4. In the case of a homeless child or youth (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 program providing early intervention services to the child;
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
6. A proposed resolution of the problem to the extent known and available to the party at the time.

## Family Rights      BIRTH TO THREE

The state Birth to Three program has developed a model form to assist parents in filing a complaint and due process complaint notice. A parent is not required to use this form.

The program must have procedures that require either party, parent or program, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

The party filing a due process complaint must forward a copy of the due process complaint to the state Birth to Three program.

The due process complaint required by this section must be deemed sufficient unless the party, parent or program, receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements of this section.

Within five days of receipt of the above notification, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of this section, and must immediately notify the parties in writing of that determination.

A party may amend its due process complaint only if:

1. The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution session; or

## Family Rights      BIRTH TO THREE

2. The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

The applicable timeline for a due process hearing under Part C shall recommence at the time the party files an amended notice, including the timeline for a resolution session.

If the program has not sent a prior written notice under Part C of IDEA to the parent regarding the subject matter contained in the parent's due process complaint, the program must, within 10 days of receiving the due process complaint, send to the parent a response that includes:

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

A response by a program under this section shall not be construed to preclude the program from asserting that the parent's due process complaint was insufficient, where appropriate.

## Family Rights      BIRTH TO THREE

Except as provided above, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

### **RESOLUTION SESSION**

The Birth to Three program must hold a resolution session within 15 days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing. The program must convene a meeting with the parents and the relevant member or members of the IFSP team who have specific knowledge of the facts identified in the due process complaint that:

1. Includes a representative of the program who has decision-making authority on behalf of the program; and
2. May not include an attorney of the program unless the parent is accompanied by an attorney.

The parent and program shall determine the relevant members of the IFSP team to attend the meeting.

The purpose of the resolution session is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the program has the opportunity to resolve the complaint that is the basis for the due process complaint.

The resolution session described above need not be held if:

1. The parents and the program agree in writing to waive the meeting; or

2. The parents and the program agree to use the mediation process described in this document.

If the program has not resolved the due process complaint to the satisfaction of parties within 30 days of the receipt of the due process complaint, the due process hearing must occur and all applicable timelines for a due process hearing shall commence.

Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

If the program is unable to obtain the participation of the parent in the resolution meeting after efforts have been made and after documenting its efforts, the program may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

If the program fails to hold the resolution meeting within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

The 30-day timeline for the due process hearing starts the day after one of the following events:

1. Both parties agree in writing to waive the resolution meeting;

## Family Rights      BIRTH TO THREE

2. After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or
3. If, after both parties agree in writing to continue the mediation at the end of the 30-day resolution period, the parent or program withdraws from the mediation process.

If a resolution to the dispute is reached at the meeting described above, the parent and program must execute a legally binding agreement that is:

1. Signed by both the parent and a representative of the program who has the authority to bind the program; and
2. Enforceable in any state court of competent jurisdiction or in a district court of the United States.

If the parent and the program execute an agreement, either may void the agreement within three business days of the agreement's execution.

If the resolution session ends without agreement, a hearing officer is appointed and a hearing is scheduled.

The party, parent or program, requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint unless the other party agrees otherwise.

When a hearing is initiated, the program shall inform you of the availability of mediation. If you are requesting a hearing or request information on any free or low-cost legal

## Family Rights BIRTH TO THREE

services, the program shall inform you of it and any other relevant services available in the area.

At a minimum, a hearing officer:

1. Must not be:
  - a. An employee of the program, any agency or other entity involved in the provision of early intervention services or care of the child; or
  - b. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
2. Must possess knowledge of, and the ability to understand, the provisions of IDEA, federal and state regulations pertaining to IDEA, and legal interpretations of IDEA by federal and state courts;
3. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
4. 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 under this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. The state Birth to Three program shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

Any party to a hearing has the right to:

## Family Rights      BIRTH TO THREE

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 written, or, at the option of the parents, electronic findings of fact and decisions.

As a parent involved in the hearing, you have the right to:

1. Have the child who is the subject of the hearing present; and
2. Open the hearing to the public.

At least five business days prior to a hearing, each party shall 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.

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

## Family Rights      BIRTH TO THREE

Subject to this section, a hearing officer must make a decision on substantive grounds based on a determination of whether the child and the child's family received appropriate early intervention services.

In matters alleging a procedural violation, a hearing officer may find that a child or a child's family did not receive appropriate early intervention services only if the procedural inadequacies:

1. Impeded the child and family's right to appropriate early intervention services;
2. Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of appropriate early intervention to the child and the child's family; or
3. Caused a deprivation of early intervention benefit.

Nothing in this section shall be construed to preclude a hearing officer from ordering the program to comply with procedural requirements in this document.

Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

The record of the hearing and the findings of fact and decisions must be provided at no cost to you.

The state Birth to Three program, after deleting any personally identifiable information, shall transmit the findings and decisions to the State Interagency Coordinating Council (SICC), and make those findings and decisions available to the public.

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

The state Birth to Three program shall ensure that not later than 30 days after the expiration of the 30 day period regarding a resolution session:

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

#### **CIVIL ACTIONS**

Any party aggrieved by the findings or decisions made through the hearing process has the right to bring a civil action with respect to the complaint presented in the hearing. 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 of controversy. The party, parent or program, bringing the action shall have 90 days from the date of the decision of the hearing officer to file a civil action.

In any action brought under this section, the court:

1. Shall receive the records of the administrative proceedings;
2. Shall hear additional evidence at the request of a party ; and
3. Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

The district courts of the United States have jurisdiction of actions brought under section 615 of the IDEA without regard to the amount in controversy. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, 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 section 615 of the IDEA, the due process hearing procedures must be exhausted to the same extent as would be required had the action been brought under section 615 of the IDEA.

### **PENDANCY**

During the pendency of any proceeding involving a hearing, unless the program and parents of a child with a disability involved otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided in the setting identified in the individualized family service plan that is consented to by the parents. If the hearing involves an application for initial services, the child shall receive those services that are not in dispute.

### **SURROGATE PARENTS**

The rights of children eligible under Part C are protected if:

1. No *parent* can be identified;

## Family Rights      BIRTH TO THREE

2. The service coordinator, after reasonable efforts, can not locate a *parent*; or
3. The child is a ward of the state under the laws of South Dakota.

The service coordinator in conjunction with the local education agency as appropriate shall identify individuals at the agency and service provider level who may be appointed as surrogate parents. The surrogate must have no interests that conflict with the interests of the child the surrogate represents and have knowledge and skills that ensure adequate representation of the child. The service coordinator in conjunction with the local education agency is responsible for the training and certification of surrogate parents.

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

In the case of a child who is a ward of the state, the surrogate parent, instead of being appointed by the program may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements in this section.

The program shall 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.

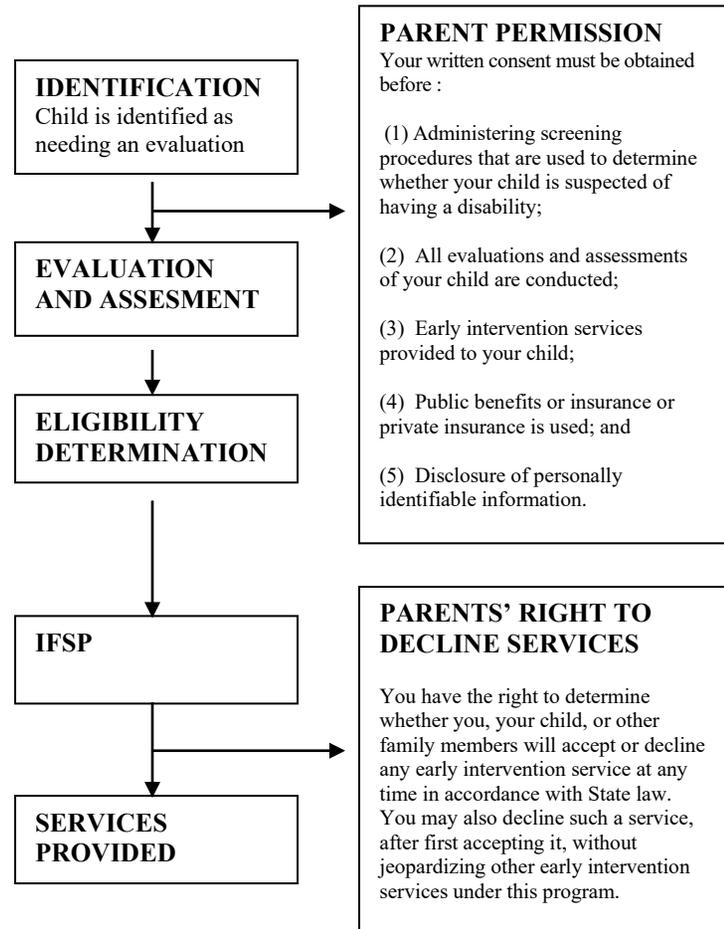
A person assigned as a surrogate parent may not be an employee of any state agency, or a person or an employee

## **Family Rights      BIRTH TO THREE**

of a person providing early intervention services, education, care, or other services to the child or to any family member of the child. A person who otherwise qualifies to be a surrogate under the provisions of this chapter is not an employee of the agency solely because the person is paid by an agency to serve as a surrogate parent.

A surrogate parent has the same rights as a parent for all purposes under Part C.

**INDIVIDUALIZED FAMILY SERVICE PLAN  
FLOW CHART**



**Note:** If you disagree with a public agency or local service provider on the (1) identification, (2) evaluation, or (3) the provision of appropriate early intervention services for your child or family in the child's natural environment, you have the right to a timely administrative resolution of your concerns. Confidentiality rules apply throughout the entire process.

## GLOSSARY

<b><i>Assessment:</i></b>	Assessment means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility under Part C of IDEA and includes the assessment of the child, and the assessment of the child's family, both consistent with federal regulations.
<b><i>Destruction:</i></b>	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 Part C regulations.
<b><i>Disclosure:</i></b>	To permit access to or the release, transfer, or other communication of early intervention records, or the personally identifiable information contained in those records, to any party, except the party identified as the party that provided or created the record, by any means, including oral, written, or electronic means.
<b><i>Early Intervention Records</i></b>	Early intervention records mean all records regarding a child that are required to be collected, maintained, or used under Part C of the IDEA and its federal regulations.
<b><i>Evaluation</i></b>	The procedures used by qualified personnel to determine a child's initial and continuing eligibility under Part C consistent with the definition of "infants and toddlers with disabilities" in the federal regulations, including determining the status of the child in each of the five developmental areas.
<b><i>IFSP:</i></b>	Individualized family service plan or IFSP means a written plan for providing early intervention services to an infant or toddler with a disability under Part C of IDEA and the infant's or toddler's family that-- (a) Is based on the evaluation and assessment; (b) Includes the content specified in the regulations; (c) Is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained consistent with the federal regulations; and (d) Is developed in accordance with the IFSP procedures in federal regulations.
<b><i>Multidisciplinary</i></b>	Multidisciplinary means the involvement of two or more separate disciplines or professions and with respect to: (a) Evaluation of the child and assessments of the child and family in accordance with federal regulations, may include one individual who is qualified in more than one discipline or profession; and (b) The IFSP Team in accordance with federal regulations must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator, consistent with federal regulations.

## Family Rights BIRTH TO THREE

**Native Language:** Native language means the language normally used by that individual with limited English proficiency, or in the case of a child, the language normally used by the parents of the child. For evaluations and assessments, the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

Native language, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

**Natural Environment:** Natural environment means settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with the provisions of the federal regulations.

**Parent:** Parent, means:

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health, or developmental decisions for the child, but not the state if the child is a ward of the state;
- (4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (5) A surrogate parent who has been appointed in accordance with State law.

Except as provided below, the biological or adoptive parent, if attempting to act as the parent under this article and if more than one party is qualified under this section to act as a parent, is presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational or early intervention service decisions for the child.

If a judicial decree or order identifies a specific person under subdivisions 1 to 4, inclusive, of this section to act as the parent of a child or to make educational or early intervention service decisions on behalf of a child, then the person is deemed to be the parent for purposes of this section, except that if a contractor provides any services to a child or any family member of the child, the contractor may not act as the parent for that child.

**Participating Agency:** 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 IDEA with respect to a particular child. A participating agency includes

## Family Rights BIRTH TO THREE

the department and contractors 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.

**Personally Identifiable:** Personally identifiable information is information that includes, but is not limited to, the following:

- (a) The name of the child, the child's parent, or other family members;
- (b) The address of the child or child's family;
- (c) A personal identifier, such as the child's or parent's social security number, child number, or biometric record;
- (d) Other indirect identifiers such as the child's date of birth, place of birth, and mother's maiden name;
- (e) Other information that, alone or in combination, is linked or linkable to a specific child that would allow a reasonable person in the early intervention community, who does not have personal knowledge of the relevant circumstances, to identify the child with reasonable certainty; or
- (f) Information requested by a person who the contractor reasonably believes knows the identity of the child to whom the early intervention record relates.

**Screening:** Screening procedures are activities that are carried out by the department or early intervention service providers to identify, at the earliest possible age, infants and toddlers suspected of having a disability and in need of early intervention services. If the department or early intervention service provider proposes to screen a child, parental consent is required.

**Ward of the State:** Ward of the state means a child who, as determined by the state where the child resides, is:

1. A foster child;
2. A ward of the state; or
3. In the custody of a public child welfare agency.

Ward of the state does not include a foster child who has a foster parent who meets the definition of a parent as described above.

**For more information:**

- **Call 1-800-305-3064 for statewide information and referral for Early Intervention Services.**
- **Part C/Birth to Three Coordinator  
Department of Education  
800 Governors Drive  
Pierre, SD 57501  
(605) 773-3678  
[doe.sd.gov/Birthto3/](http://doe.sd.gov/Birthto3/)**  
**Disability Rights South Dakota  
(605) 224-8294  
1-800-658-4782 (Voice/TTY)  
[drsdlaw.org](http://drsdlaw.org)**
- **South Dakota Parent Connection  
1-800-640-4553  
[sdparent.org](http://sdparent.org)**

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