

UTAH DEPARTMENT OF HEALTH AND HUMAN SERVICES POLICY AND PROCEDURES		
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DISPUTE RESOLUTION		
<p>RATIONALE: To establish a fair and transparent process for resolving disagreements between families and local early intervention (EI) programs</p> <p><i>Related Policies, Applicable Standards, Statutes:</i> 34 CFR §303.13: Early Intervention Services 34 CFR §303.25: Native language 34 CFR § 303.430 State dispute resolution options 34 CFR § 303.431 Mediation 34 CFR § 303.432 Adoption of State Complaint Procedures 34 CFR § 303.433 Minimum State Complaint Procedures 34 CFR § 303.434 Filing a Complaint 34 CFR § 303.435 Appointment of an Impartial Due Process Hearing Officer 34 CFR § 303.436 Parental Rights in Due Process Hearings 34 CFR § 303.437 Convenience of Hearings and Timelines 34 CFR § 303.438 Civil Action 34 CFR § 303.721 Annual Number of Children Served – Report Requirement Baby Watch Policy 1.A.4 General Supervision System for Monitoring Implementation of Part C Baby Watch Policy 1.B.3 Individualized Family Service Plan (IFSP) Development, Implementation, and Review Baby Watch Policy 1.B.4 Procedural Safeguards</p>		
Original Effective: 7/01/2013	Revision: February 2023	Next Review Due: 3 years after

I. DESCRIPTION

Procedures that the Baby Watch Early Intervention Program has established and adopted in accordance with Individuals with Disabilities Education Act (IDEA) 34 CFR §303.430 State Dispute Resolution Options for the timely resolution of complaints through mediation, written complaints, and due process hearings

This policy supersedes any previous department policy governing this subject matter. It does not supplant any existing federal, state, or department laws or policies to which the department shall adhere.

II. DEFINITIONS

Complaint: As described in 34 CFR §303.430; 34 CFR 303.432-303.434, a formal written process by a parent to convey an allegation of a violation of their rights under Part C.

Consent: As described in §303.7, consent means that: a) a parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language; b) the parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and c) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

Corrective Action: Local EI program activities to successfully address any findings of noncompliance identified by Baby Watch.

DHHS or department: Utah Department of Health and Human Services and collectively all its operational units.

Dispute Resolution: The formal process established by IDEA to resolve disagreements, which may include: 1) Mediation, 2) Written complaint, and 3) Due process hearing.

Due Process Complaint: As described in 34 CFR §303.430(d), a due process complaint is the formal process for requesting a due process hearing regarding any matter listed in § 303.421(a).

Due Process Hearing: As described in 34 CFR §303.430-438, a due process hearing is the most formal dispute resolution option available under Part C of the IDEA. It is conducted by a hearing officer who considers the information provided by each side, may ask questions of witnesses, and makes a decision about the dispute. The hearing officer is required to be impartial and knowledgeable about IDEA Part C.

Individualized Family Service Plan (IFSP): As described in §303.20, a written plan for providing early intervention services to an infant or toddler with a disability and their family.

Individuals with Disabilities Education Act (IDEA): The federal law that governs how states and public agencies provide early intervention, special education, and related services to children with disabilities.

Mediation: As described in 34 CFR §303.430-303.431, mediation is a dispute resolution process that uses a trained person to assist other people in coming to their own agreements about how to resolve their conflict or dispute. Unlike a judge or arbitrator, the mediator does not decide the outcome of the dispute.

OU: Operational units within DHHS, including divisions, offices, or standalone operations whose director reports to the executive director, a deputy director, an assistant deputy director, or a division director.

Parent: As described in §303.27, a biological or adoptive parent of a child, a foster parent, a guardian generally authorized to act as the child's parent or authorized to make EI, educational, health, or developmental decisions for the child, an individual acting in the place of a biological or adoptive parent

with whom the child lives or an individual who is legally responsible for the child's welfare, or a surrogate parent.

Parent Rights: As described in §303.401-421, the rights of parents and children related to the confidentiality of personally identifiable information and early intervention records, as well as the right to parental consent and notice.

Utah Parent Center: The designated Parent Training & Information Center (PTIC) for the State of Utah, funded by the U.S. Department of Education's Office of Special Education Programs (OSEP).

II. POLICY

- A. Baby Watch shall ensure the timely administrative resolution of disagreements through:
 - 1. Mediation
 - 2. Written complaints
 - 3. Due process hearings

III. PROCEDURE

- A. Mediation
 - 1. Baby Watch shall ensure that parties may participate in a mediation process to dispute any matter under Part C of IDEA, including matters arising prior to the filing of a written complaint. Mediation may be requested by parents at any time.
 - a) Mediation shall be voluntary on the part of all parties involved
 - b) Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under Part C
 - c) Mediation shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques
 - 2. The Department shall maintain a list of individuals who are approved mediators who are knowledgeable in IDEA Part C laws and regulations.
 - a) A mediator may not be a Baby Watch employee or a direct service provider employed by a local EI program.
 - b) The chosen mediator is not considered an employee of Baby Watch or a local EI program solely because they are paid to serve as a mediator.
 - c) Mediators shall not have personal or professional interests that conflict with their objectivity.
 - 3. Upon the request for mediation, Baby Watch shall select a mediator from the approved list on a random, rotational, or other impartial basis.
 - 4. Baby Watch shall bear the cost of the mediation, to include the cost of any related meetings in the mediation process.
 - 5. Baby Watch shall ensure that all mediation sessions are scheduled in a timely manner and are held in a location that is convenient to all parties in the dispute.

6. If a resolution of all parties is reached through the mediation, the parties must execute a legally binding written agreement that includes the following:
 - a) A statement that all mediation discussions will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding
 - b) A statement expressing that the written, signed agreement is enforceable in any state or federal district court of competent jurisdiction or in a district court of the United States.
 - c) Signatures by both the parent and a representative from Baby Watch- authorized to bind the agency
7. For parents and local EI programs that choose not to use the mediation process, Baby Watch may provide the opportunity to meet with a neutral third party to learn about the benefits of the mediation process. The third party may be:
 - a) A mediator employed by an appropriate alternative dispute resolution entity
 - b) The Utah Parent Center

B. Written Complaints

1. Baby Watch shall address any written complaint in a timely manner, including a complaint filed by an individual or organization from another state.
2. Any individual or organization may file a signed written complaint, which shall be sent via email to babywatch.utah.gov, or submitted to: Baby Watch Early Intervention Program Manager, PO Box 144720, SLC UT 84114-4720
3. The written complaint shall include:
 - a) A statement that Baby Watch, a public agency, or local EI program has violated a requirement of Part C of IDEA
 - b) The facts on which the statement is based
 - c) The signature and contact information for the complainant
 - d) If alleging violations with respect to a specific child, the written complaint shall include:
 - 1) The name and address of the residence of the child
 - 2) The name of the local EI program serving the child
 - 3) A description of the nature of the problem involving the child, including facts relating to the problem
 - 4) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed
4. All written complaints must be filed regarding an alleged violation that occurred not more than one year prior to the date the complaint is received.
5. The party filing the written complaint must email or submit a copy of the complaint to Baby Watch and to the local EI program serving the child.
6. Within 60 days after a written complaint is received, Baby Watch shall:
 - a) Conduct an independent on-site investigation, if Baby Watch determines that an investigation is necessary

- b) Provide the complainant the opportunity to submit additional information, either orally or in writing
- c) Provide Baby Watch or the local EI program with an opportunity to respond to the written complaint including at a minimum, and at the discretion of the Baby Watch, a proposal to resolve the complaint
- d) Provide an opportunity for the parent who has filed a written complaint and the local EI program to voluntarily engage in mediation
- e) Review all relevant information and make an independent decision as to whether Baby Watch or the local EI program is violating a requirement of Part C
- f) Issue a written decision to the complainant and to the local EI program that:
 - 1) Addresses each allegation in the written complaint
 - 2) Contains findings of fact and conclusions
 - 3) Provides the reasons for Baby Watch's final decision
- g) An extension of the 60-day timeline is only permitted if:
 - 1) Exceptional circumstances exist with respect to a particular written complaint
 - 2) The parent, individual, or organization filing the written complaint AND Baby Watch, or local EI program agree to extend the timeline to engage in mediation
- h) Baby Watch shall follow up to ensure effective implementation of its final, written decisions. Follow up, if needed, may include:
 - 1) Training and technical assistance
 - 2) Negotiations
 - 3) Corrective actions to achieve compliance
- i) In resolving a written complaint in which Baby Watch finds a failure to provide appropriate services, Baby Watch shall:
 - 1) Address that 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 written complaint, and their family.
 - 2) Address appropriate future provision of services for all infants and toddlers, and their families.
 - 3) Ensure broader corrective actions are considered based on reviews conducted under Baby Watch's general supervision system.
- j) 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 a hearing, Baby Watch shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.
 - 1) Any issue that is not a part of the due process hearing will be resolved as described in a timely manner.
 - 2) If an issue is raised in a written complaint that has been previously decided in a due process hearing involving the same parties, the due process hearing is binding on the issue and Baby Watch will inform the complainant to that effect.
- k) A written complaint alleging Baby Watch or a local EI program's failure to implement a due process hearing decision will be resolved by Baby Watch.

- l) Instructions for filing a written complaint and Dispute Resolution Model Letters, in both English and Spanish, are available on the Baby Watch website.

C. Due Process Hearings

1. Upon receipt of a due process complaint/request for a due process hearing, Baby Watch will appoint an impartial due process hearing officer to implement the complaint resolution process
2. A hearing officer shall have knowledge of Part C early intervention and shall perform the following duties:
 - a) Listen to the presentation of relevant viewpoints about the written complaint
 - b) Examine all information relevant to the issues
 - c) Seek to reach a timely resolution of the written complaint
 - d) Provide a record of the proceedings, including a written decision
3. Impartial means that the due process hearing officer:
 - a) Is not an employee of Baby Watch or a local EI program involved in the provision of early intervention services
 - b) Does not have a personal or professional interest that would conflict with their objectivity in implementing the process
 - c) A person who otherwise qualifies is not considered an employee solely because the person is paid by Baby Watch to implement the due process hearing procedures or mediation procedures.
4. Throughout the due process hearing, Baby Watch ensures that the parents of a child referred to Part C are afforded the right to:
 - a) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for infants and toddlers with disabilities
 - b) Present evidence and confront, cross-examine, and compel the attendance of witnesses
 - c) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing
 - d) Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent
 - e) Receive a written copy of the findings of fact and decisions at no cost to the parent
 - f) Have the due process hearing carried out at a time and place that is reasonably convenient to the parents
 - g) Have the due process hearing completed and a written decision mailed to each of the parties within 30 days of receipt of the parent's written complaint
 - h) A hearing officer may grant specific extensions of time beyond 30 days upon request of either party
 - i) Bring a civil action in state or federal court, if they disagree with the findings and decision issued pursuant to a written complaint
5. Baby Watch ensures that the EI status and services of a child during the pendency of a written complaint are upheld such that:
 - a) Unless Baby Watch and the parents of a child 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.

- b) If the written complaint involves an application for initial EI services, the child must receive those services that are not in dispute.

D. Federal Reporting Requirement

- 1. Baby Watch reports annually to OSEP the number of:
 - a) Mediations held, and settlement agreements reached through such mediations
 - b) Written complaints received
 - c) Due Process Hearings conducted

IV. EXCEPTIONS

Baby Watch may make exceptions to this policy as necessary.