

UTAH DEPARTMENT OF HEALTH AND HUMAN SERVICES POLICY AND PROCEDURES		
Baby Watch Early Intervention Program Policy: 1.B.4	Page 1 of 7	
PROCEDURAL SAFEGUARDS		
<p>RATIONALE: To educate parents about their rights under Part C of IDEA, and to resolve disagreements between families and local early intervention (EI) programs in a fair and systematic way</p> <p><i>Related Policies, Applicable Standards, Statutes:</i></p> <p>34 CFR § 303.400: General responsibility of lead agency for procedural safeguards 34 CFR § 303.401: Confidentiality and opportunity to examine records 34 CFR § 303.402: Confidentiality 34 CFR § 303.404: Notice to parents 34 CFR § 303.405: Access rights 34 CFR § 303.406: Record of access 34 CFR § 303.407: Records of more than one child 34 CFR § 303.408: List of types and locations of information 34 CFR § 303.409: Fees for records 34 CFR § 303.410: Amendment of records at a parent’s request 34 CFR § 303.411: Opportunity for a hearing 34 CFR § 303.412: Result of a hearing 34 CFR § 303.413: Hearing procedures 34 CFR § 303.414: Consent prior to disclosure or use 34 CFR § 303.415: Safeguards 34 CFR § 303.416: Destruction of information 34 CFR § 303.417: Enforcement 34 CFR § 303.420: Parent consent and ability to decline services 34 CFR § 303.421: Prior written notice and procedural safeguards notice 34 CFR § 303.422: Surrogate parents Baby Watch Policy 1.A.4 General Supervision System for Monitoring Implementation of Part C Baby Watch Policy 1.B.2 Dispute Resolution Baby Watch Brochure: Parents Rights and-Responsibilities-in Part C Early Intervention</p>		
Original Effective: 7/01/2013	Revision: February 2023	Next Review Due: 3 years after

I. DESCRIPTION

The processes and procedures in place to ensure that parent rights under Part C of IDEA are upheld throughout a family’s time in early intervention (EI), including dispute resolution

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

II. DEFINITIONS

Consent: As described in §303.7, consent means that: 1) A parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language; and 2) 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 a) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. b) 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).

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 Complaint.

Family Educational Rights and Privacy Act (FERPA): As described in 20 U.S.C. § 1232g; 34 CFR Part 99, FERPA is a federal law that gives custodial and noncustodial parents alike certain rights with respect to their children's education records, including the right to 1) access their children's education records, 2) seek to have the records amended, 3) consent to disclosure of personally identifiable information from the records, and 4) file a complaint.

Operational Unit: 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 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.

Personally Identifiable Information (PII): As described in the FERPA regulations, 34 CFR §99.3, information that can be used to distinguish or trace an individual's identity either directly or indirectly through linkages with other information.

Prior Written Notice: According to §303.421, the notice provided to parents a reasonable time before the lead agency 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

Procedural Safeguards: As described in §303.400, the responsibilities of the lead agency and EI providers regarding confidentiality, parental consent and notice, surrogate parents, and dispute resolution procedures

III. POLICY

- A. Parents are informed of their rights to procedural safeguards, records, and policies during all IFSP meetings, with the use of the Parent Rights and Responsibilities in Part C Early Intervention brochure.
- B. Baby Watch shall ensure the protection of the confidentiality of any Personally Identifiable Information (PII), and records collected or maintained pursuant to Part C and in accordance with the Family Educational Rights and Privacy Act (FERPA) and are monitored through Baby Watch's General Supervision System. A parent or other individual may file a complaint if these requirements have not been met.
- C. Prior written consent shall be obtained before PII is disclosed to anyone other than authorized representatives, employees of Baby Watch, or local EI programs. If a parent refuses consent, a meeting shall be held to explain to parents how their failure to consent affects the ability of their child to receive services. The meeting does not override a parent's right to refuse consent.
- D. A referral to Part B preschool (e.g., Referral Notification) includes the disclosure of PII (child's name, child's date of birth, and parent contact information) to the Utah State Board of Education. The local school district is required to facilitate transition from the local EI program, unless the parent declines the Part B referral in writing.
- E. Parents of children referred to or receiving early intervention services are provided the opportunity to inspect and review all early intervention records regarding their child and family that are collected, maintained, or used under Part C, including:
 - 1. Records related to evaluations and assessments
 - 2. Screening
 - 3. Eligibility determinations
 - 4. Development and implementation of IFSPs
 - 5. Provision of early intervention services
 - 6. Individual complaints involving the child
 - 7. Or any part of the child's early intervention record
- F. Local EI programs shall ensure Utah Bureau of Criminal Identification (BCI) criminal background checks are completed and evaluated for each employee, contractor, and subcontractor upon hiring and every five years thereafter.

III. PROCEDURE

- A. Parents of a child referred to Baby Watch are afforded the right to confidentiality of PII. The confidentiality procedures:
 - 1. Apply to all PII of a child and the child's family that is contained in the records collected, used, or maintained by the Baby Watch or a local EI program
 - 2. Apply from the point in time when the child is referred for early intervention services until Baby Watch or the local EI program is no longer required to maintain the information
 - 3. Are explained in the Parent Rights and Responsibilities in Part C Early Intervention brochure, available in both English and Spanish

- B. Baby Watch and local EI programs shall:
 - 1. Comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding the child's IFSP, or prior to any due process hearing. Access will be granted within 10 days of a request
 - 2. Provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used

- C. The parent has a right to inspect and review early intervention records, including the right to:
 - 1. A response from the participating local EI program for explanations and interpretations of the early intervention records
 - 2. Request copies of the records, if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records
 - 3. Have a representative of the parent inspect and review the records

- D. If any early intervention record includes information on more than one child, the parent has the right to inspect and review only the information relating to their child or to be informed of that specific information.

- E. Baby Watch and local EI programs may presume that the parent has authority to inspect and review records relating to their child, unless documentation that the parent does not have the authority under applicable Utah laws governing such matters as custody, foster care, guardianship, separation, and divorce has been provided.

- F. Baby Watch or local EI programs shall provide at no cost to parents:
 - 1. A summary of evaluations, assessments of the child, and family assessments, with the notice of eligibility/ineligibility
 - 2. A copy of the IFSP as soon as possible after each IFSP meeting
 - 3. An initial copy of the child's record

- G. Baby Watch and local EI programs may charge a fee for copies of records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. They may not charge a fee to search for or to retrieve information.

- H. Baby Watch and local EI programs shall keep a record of parties obtaining access to early intervention records collected, maintained, or used under Part C (except access by parents, authorized representatives, and employees of the local EI program. The record shall include:
 - 1. Name of the party
 - 2. Access date
 - 3. Purpose for which the party is authorized to use the early intervention records

- I. A parent who believes that information in the early intervention records collected, maintained, or used is misleading, or violates the privacy or other rights of the child or parent, may request that the local EI program amend the information.
 - 1. The local EI program shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
 - 2. If the local EI program refuses to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to file a written complaint, request mediation, or request a due process hearing to challenge information in their child's early intervention records.
 - 3. A parent may request a due process hearing or may request a hearing directly under procedures that are consistent with FERPA.
 - a) If, as a result of the hearing, Baby Watch decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child or parent, it shall amend the information accordingly and so inform the parent in writing.
 - b) 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, Baby Watch shall inform the parent of their right to place within the child's early intervention records a statement commenting on the information or setting forth any reasons for disagreeing with the decision.
 - c) Any explanation shall be maintained as a part of the EI record, including when the decision was disclosed to any party.

- J. The local EI program shall protect the confidentiality of PII throughout ~~at~~ the collection, maintenance, use, storage, disclosure, and destruction of records.
 - 1. A designated employee at the local EI program shall assume responsibility for ensuring the confidentiality of any PII.
 - 2. All persons collecting or using PII shall receive training regarding Baby Watch's policies and procedures.
 - 3. Each local EI program shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to PII.
 - 4. Each local EI program shall develop and implement processes and procedures to ensure BTOTS security, including: only approve access for eligible individuals, documentation of proper approval of rights, termination of access rights within 24 hours of ending employment, and reviews are performed and documented for eligible individual's access rights.

- K. The local EI program shall inform parents when PII collected, maintained, or used is no longer needed to provide services to the child.
- L. Child records shall be destroyed at the request of the parents. However, a permanent record of a child's name, date of birth, parent contact information, local EI program(s), and exit data may be maintained indefinitely.
- M. Baby Watch requires local EI programs to keep education records for 5 years from the time the child exits the local EI program. At that time, the education records can be destroyed.
- N. The local EI program ensures that written parental consent is obtained before all evaluation and assessments of a child are conducted, early intervention services are provided to the child, and disclosure of PII.
- O. If a parent does not give consent for evaluation, or services, the local EI program shall make reasonable efforts to ensure that the parent is fully aware of the nature of the evaluation and assessment of the child for early intervention services that may be available if the child is found eligible, and that the parent understands that the child will not be able to receive the evaluation, assessment, or early intervention services unless consent is given.
 - 1. Baby Watch and local EI programs may not use the due process hearing procedures to challenge a parent's refusal to provide consent.
 - 2. 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 EI service at any time.
 - 3. Parents may decline a service after first accepting it, without jeopardizing other early intervention services.
 - 4. Baby Watch and local EI programs shall ensure that prior written notice shall be provided to parents a reasonable time before Baby Watch or a local EI program proposes, or refuses to initiate or change any of the following: a) eligibility, b) evaluation, c) placement, d) provision of early intervention services to the child or family.
- P. The prior written notice shall include sufficient detail to inform parents about:
 - 1. The action that is being proposed or refused
 - 2. The reasons for taking the action
 - 3. All procedural safeguards that are available, including information on written complaint, mediation, or due process hearing, and any timelines under those procedures

- Q. The prior written notice shall be written in language understandable to the general public and provided in the parent's native language or preferred mode of communication, unless it is clearly not feasible to do so. If the parent's native language or preferred mode of communication is not a written language, Baby Watch or the local EI program will take steps to ensure that:
1. The notice is given through a qualified interpreter in the parent's native language or preferred mode of communication
 2. The parent understands the notice
 3. There is written evidence (i.e., parent signature) that the parent received the prior written notice
- R. In the event no parent can be identified or located, Baby Watch shall ensure that the rights of a child are protected.
1. Baby Watch or another public agency shall assign an individual to act as a surrogate for the parent as permitted under state law.
 2. This assignment process includes methods for determining whether a child needs a surrogate parent, and assigning a surrogate parent to the child.
 3. Baby Watch consults with the public agency that has been assigned care of the child, and ensures the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.
 4. A person selected as a surrogate parent shall:
 - a) Not be an employee of Baby Watch or any other public agency or local EI program providing early intervention services, education, care or other services to the child or family members of the child
 - b) Not have personal or professional interest that conflicts with the interest of the child they represent
 - c) Have appropriate knowledge and skills to ensure adequate representation of the child
 5. In the event a child who is a ward of the State, the surrogate parent may be appointed by the judge overseeing the child's case.
 6. The surrogate parent has the same rights as a parent for all purposes under Part C.

IV. EXCEPTIONS

Baby Watch may make exceptions to this policy as necessary.