

Procedural Safeguards Manual:

Rights of Parents of Children with Disabilities Ages Birth to Three



Procedural Safeguards Manual: Rights of Parents of Children with Disabilities Ages Birth to Three

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Introduction to Procedural Safeguards in Early ACCESS

Parents have rights, known as procedural safeguards, which apply to every aspect of the early intervention process. Procedural safeguards are part of state and federal laws and regulations to ensure children eligible for Early ACCESS receive early intervention services and protect family's rights.

The Early ACCESS Integrated System of Early Intervention Services is Iowa's implementation of Part C of the Individuals with Disabilities Education Act (IDEA) for infants and toddlers from birth to age 3. Early ACCESS is a statewide, interagency system involving the Iowa Departments of Education, Health and Human Services and University of Iowa Child Health Specialty Clinics in partnership with Early ACCESS Grantees, early intervention providers and families and children with disabilities, ages birth to three. The purpose of Early ACCESS is to develop, coordinate and provide early intervention services and resources so parents and other caregivers are able to support children's growth and development.

This document serves as your procedural safeguards notice and will provide information to understand the rights available to you and your child through the federal law, IDEA Part C, and the Iowa Administrative Code 281 Chapter 120 for Early ACCESS Integrated System of Early Intervention Services.

Where Can I Find Further Assistance?

Further information on rights can be found by contacting any of the following:

- Your Early ACCESS Service Coordinator
- Your Area Education Agency (AEA) / Early ACCESS Grantee
- Iowa Department of Education (Department)
- Iowa Parent Training and Information Center, ASK Resource Center
- Disability Rights Iowa

Early ACCESS Service Coordination

Every family who participates in Early ACCESS receives service coordination from an Early ACCESS service coordinator upon referral. Service coordination services provided by a service coordinator assist and enable your family to receive the services and rights, including procedural safeguards, required under Iowa Administrative Code (IAC) 281 Chapter 120 and IDEA Part C.

The service coordinator's responsibilities include communicating with early intervention providers to coordinate referrals, meetings, evaluations, assessments and assisting in development and implementation of the Individualized Family Service Plan (IFSP). The service coordinator partners with the family to gain access to, and coordinate the provision of, early intervention services and other services, resources and support necessary to benefit families' and children's growth and development.

Area Education Agency / Early ACCESS Grantee

The Area Education Agency (AEA) is designated as an Early ACCESS Grantee for each of the AEA regions in Iowa. You may contact any of the following AEA staff regarding Early ACCESS:

- Administrator of Special Education
- Early ACCESS Liaison or AEA Special Education Leadership

Listed below are each of the AEA's main office location, phone number and website:

AEA	Main Office	Phone Number	Website
Keystone	Elkader	800-632-5918	https://www.keystoneaea.org/
Central Rivers	Cedar Falls	800-542-8375	https://centralriversaea.org/
Prairie Lakes	Pocahontas	866-540-3858	https://www.plaea.org/
Mississippi Bend	Bettendorf	800-947-2329	https://mbaea.org
Grant Wood	Cedar Rapids	800-332-8488	https://gwaea.org/
Heartland	Johnston	800-362-2720	https://heartlandaea.org/
Green Hills	Council Bluffs	844-366-0503	https://ghaea.org
Great Prairie	Ottumwa	800-622-0027	https://gpaea.org
Northwest	Sioux City	800-352-9040	https://nwaea.org/

Iowa Department of Education

The Iowa Department of Education (Department) is designated as the IDEA Part C Lead Agency.

Iowa Department of Education
Bureau of Early Childhood
400 E. 14th Street
Des Moines, IA 50319-0146
515-281-5294
<https://educate.iowa.gov/>

Iowa Parent Training and Information Center (PTI)

Each state has a federally funded parent training and information center (PTI). Iowa's PTI is the ASK Resource Center.

ASK Resource Center
6165 NW 86th Street, Suite 234
Johnston, IA 50131

1-800-450-8667

515-243-1713

Fax: 515-243-1902

<https://www.askresource.org/>

Disability Rights Iowa (DRI)

Each state has a federally funded protection-and-advocacy organization for persons with disabilities. In Iowa, this organization is Disability Rights Iowa (DRI).

Disabilities Rights Iowa

666 Walnut Street, Suite 2220

Des Moines, Iowa 50309

515-278-2502

800-779-2502

Relay: 711

Fax: 515-278-0539

<https://disabilityrightsiaowa.org/>

General Information

The procedural safeguards for parents for children ages birth to three apply to every aspect of the early intervention process, including evaluation, access to records and development of the Individualized Family Service Plan (IFSP).

When is a parent provided the Procedural Safeguards Manual?

You must receive the manual, Procedural Safeguards Manual for Parents Rights for Children Ages Birth to Three, a minimum of one time per year. The Early ACCESS service coordinator will discuss and review the rights and protections with you at any time upon request.

Additionally, the Procedural Safeguards Manual for Parents Rights for Children Ages Birth to Three must be provided to you prior to the following:

- Post-referral screening;
- Evaluation and assessment to determine if your child is eligible for Early ACCESS;
- Consent to Early ACCESS services on an Individualized Family Service Plan (IFSP), if eligible;
- Due process complaint or state complaint; and
- Upon request.

What notice must a parent receive about the Procedural Safeguards?

The Department must give notice which is adequate to fully inform you about the procedural safeguards for Early ACCESS under IDEA Part C and IAC 281 Chapter 120.

Early ACCESS is Iowa's system for providing IDEA Part C early intervention services for children ages birth to three years of age.

The Procedural Safeguards Manual for Parents Rights for Children Ages Birth to Three is available on the Department website at: <https://educate.iowa.gov/pk-12/special-education/parent-information#procedural-safeguards-manual-for-parents-rights-for-children-ages-birth-3>

What Are Other Sources of Information?

There are other sources of information about IDEA, IAC, policies and practices which are important for parents.

Websites with information about procedural safeguards

- Iowa Requirements for Early ACCESS Integrated System of Early Intervention Services
 - <https://www.legis.iowa.gov/law/administrativeRules/rules?agency=281&chapter=120>
- Individuals with Disabilities Education Act (IDEA)
 - <https://sites.ed.gov/idea/>
 - Requirements for the contents of the Procedural Safeguard Manual for Parents for infants and toddlers with disabilities (ages birth through two) and their families are found in 20 USC § 1439 of the Individuals with Disabilities Education Act (IDEA) 2004.
- Family Educational Rights and Privacy Act (FERPA)
 - <https://studentprivacy.ed.gov/ferpa>

Websites with information about resources and references

- The Center for Parent Information and Resources is a website with many publications regarding IDEA, procedural safeguards and other disability information.
 - <https://www.parentcenterhub.org/>
- PACER Center has a special education overview, as well as other information for families who have children with disabilities.
 - <https://www.pacer.org/>
- The Iowa Department of Education website for dispute resolution provides additional information on the ways disputes can be resolved, complaints investigated, and decisions made.
 - <https://educateiowa.gov/pk-12/special-education/dispute-resolution>
- The Health Insurance Portability and Accountability Act (HIPAA) provides information about how FERPA and HIPAA apply to education and health records maintained about children.
 - <https://www.hhs.gov/hipaa/for-professionals/special-topics/ferpa-hipaa/index.html>

Confidentiality of Information and Early Intervention Records

The IDEA, Family Educational Rights and Privacy Act (FERPA), and Iowa Administrative Code (IAC) govern access to children's early intervention records, which may be referred to as Early ACCESS records. The Department ensures the protections and effective implementation of the procedural safeguards by each Early ACCESS Grantee and early intervention service providers involved in the provision of early intervention services.

IAC 281-120.401 through 120.417; 34 CFR§§303.401 through 303.417

Access to Records

The Early ACCESS Grantee and early intervention service providers must permit parents to inspect and review any early intervention records relating to their children which are collected, maintained or used by the agency.

Parents of infants and toddlers who are referred to or receive early intervention services must be offered the opportunity to inspect and review all records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child or any other area involving records about your child or your family.

The Early ACCESS Grantee and early intervention service providers must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing or resolution meeting and in no case more than ten days after the request is made.

Inspect and Review Records

The right to inspect and review early intervention records includes:

- Response from the Early ACCESS Grantee or early intervention service providers to reasonable requests for explanations and interpretations of the records;
- Request the Early ACCESS Grantee or early intervention service providers provide copies of the early intervention records containing the information, if failure to provide the records would effectively prevent you from exercising the right to inspect and review records; and
- Have a representative of the parent inspect and review early intervention records.

Note: The Early ACCESS Grantee and early intervention service providers presume a parent has the authority to inspect and review your child's records unless the agency has been advised that you do not have the authority under applicable state law governing such matters as guardianship, separation and divorce.

Types and Locations of Records

The Early ACCESS Grantee and early intervention service providers must provide parents, upon request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.

Note: Early intervention records are developed and maintained in the Iowa IDEA data systems. A parent may be able to inspect and review records in an electronic format in the Iowa IDEA data system.

Cost for Copy of Records

The Early ACCESS Grantee and early intervention service providers may charge a fee for the copies of early intervention records if the fee does not effectively prevent you from your right to review and inspect the records. The agency may not charge a fee to search for or to retrieve the information.

Document Access to Records

The Early ACCESS Grantee and early intervention service providers must keep a record of parties obtaining access to early intervention records collected, maintained, or used for Early ACCESS, except for access by parents and authorized employees of the Early ACCESS Grantee or early intervention service providers.

The records must include the following information:

- Name of the party;
- Date access was given; and
- Purpose for which the party is authorized to use the early intervention records.

Note: If a record includes information on more than your child, a parent has the right to inspect and review only the information relating to their child or to be informed of specific information.

Amendment of Records

A parent who believes the information in the Early ACCESS records collected, maintained or used is inaccurate, misleading or violates the privacy or other rights of the child or parent, may request the Early ACCESS Grantee or early intervention service providers maintaining the information to amend the information.

The agency must decide whether to amend the information in accordance with the request within a reasonable amount of time of receipt of the request.

If the agency refuses to amend the information in accordance with the request, the agency must inform the parent of the refusal and advise the parent of the right to a hearing.

Maintenance and Destruction of Information

The Early ACCESS Grantee or early intervention service providers maintain files on children who have been evaluated or received early intervention services within the AEA regional service area. Iowa Administrative Code for Early ACCESS, in compliance with FERPA, specifies records must be maintained for five years after early intervention and special education services end.

The Early ACCESS Grantee or early intervention service providers must inform parents when their child's personally identifiable information collected, maintained or used for Early ACCESS is no longer needed to provide services to the child.

The AEA policy is to destroy records after the student has attained the age of 27 years. At that time, these records will be destroyed. At the time your child exits early intervention or special education, you will receive notification about the destruction of records; this will be the only notification you receive. If you believe your child's records may be needed in the future (e.g. social security documentation), you may request a copy by contacting the AEA.

The Early ACCESS Grantee and early intervention service providers must destroy personally identifiable information at the request of the parents, with the exception of information included in the child's permanent record.

The child's permanent record, including the child's name, date of birth, parent contact information, names of service coordinator(s) and Early ACCESS provider(s), and exit data may be maintained without time limitation.

What is a FERPA hearing?

Upon your request, the Early ACCESS Grantee or early intervention service providers will provide an opportunity for a hearing to challenge information in the Early ACCESS record to ensure it is not inaccurate, misleading or otherwise in violation of the privacy or other rights of your child.

The hearing will result in one of two decisions:

1. If the decision is that the information is misleading, inaccurate or otherwise in violation of the privacy or other rights of your child, the agency shall amend the information accordingly and inform you in writing.
2. If the decision is that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, the agency will inform you of the decision. The agency must also inform you of your right to place in the records it maintains on your child a statement commenting on the information and setting forth your reasons for disagreeing with the decision of the agency.

Note: Any explanation placed in the records of your child must be maintained by the Early ACCESS Grantee or early intervention service providers as part of the record as long as the record or contested portion is maintained by the agency. If the record or the contested portion of the record is disclosed by the agency to any party, your explanation must also be disclosed.

Permission to Release Records

Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of the Early ACCESS Grantee and early intervention service providers unless the information is contained in early intervention records and FERPA authorizes disclosure without parent consent. If you have any questions about FERPA's exceptions, please contact your Early ACCESS service coordinator.

The Department discloses early intervention records to the AEA and District where the child resides, to facilitate a smooth transition from Early ACCESS and identify all children potentially eligible for services under IDEA Part B Special Education.

Protecting Confidentiality and Privacy

Each Early ACCESS Grantee and early intervention service providers must protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages of records.

Other obligations from the law include:

- One official at each Early ACCESS Grantee and early intervention service providers shall assume responsibility for ensuring the confidentiality of personally identifiable information.
- All people collecting or using personally identifiable information must receive confidentiality and privacy training or instruction on confidentiality and privacy; and
- Each Early ACCESS Grantee and early intervention service providers shall maintain for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

What is Personally Identifiable Information?

Personally Identifiable Information includes, and is not limited to:

- The child's name;
- The name of the child's parent or other family members;
- The address of the child or child's family;
- A personal identifier, such as a student identification number or biometric record;
- Other indirect identifiers, such as the child's date of birth, place of birth, and mother's maiden name;
- Other information that, alone or in combination, is linked or linkable to a specific child which would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the child with reasonable certainty; or,
- Information requested by a person who the educational agency or institution reasonably believes knows the identity of the child to whom the education record relates.

IAC 120.29; 34 CFR§§303.29

Parental Consent

Parental Consent is Defined as:

- Obtaining written parental permission prior to implementation of actions and activities involving child find, early intervention services and release of information or personally identifiable information;
- Fully informed of all the information about the action for which a parent is giving consent, in your native language or the mode of communication normally used (such as sign language, Braille, or oral communication);
- Understanding and agreeing, in writing, to the action for which your consent is sought.
 - A consent for services must describe the actions to be implemented.
 - A consent to release and exchange information must list the early intervention records (if any) which will be released and to whom they will be released.
- Providing written parental consent is voluntary on your part, and you may withdraw consent at any time.

With the other members of your child's early intervention team, you will consider which services can best help you accomplish the outcomes you want for your child and family. You will be asked to give your consent for those services you want. You do not have to agree to all services recommended. You can say no to some services and still get the services that you do want. If you decide to add early intervention services at a later date, you will give your consent when services are added to the IFSP.

Note: The withdrawal of consent is not retroactive. In other words, an agency will not be found in violation for actions taken or completed following consent being received and before the withdrawal of said consent.

When is parental consent required?

The Early ACCESS Grantee or early intervention service providers must obtain your parental consent before the following:

Post-Referral Screening

- The Early ACCESS Grantee or early intervention service providers may choose to complete post-referral screenings for children under the age of three who have been referred to Early ACCESS to determine whether they are suspected of having a disability. Parental consent must be obtained prior to conducting a post-referral screening.
- If the post-referral screening or other available information indicates the child is:
 - Suspected of having a disability: The Early ACCESS Grantee or early intervention service providers must conduct an evaluation and assessment of the child and family. However, the agency must provide prior written notice and receive parental consent before doing so.
 - Not suspected of having a disability: The Early ACCESS Grantee or early intervention service providers must provide prior written notice which must include a description of the parent's right to request an evaluation.

Note: A parent may request and provide consent for an evaluation and assessment at any time during the post-referral screening process. If you request and provide consent for an evaluation, the Early ACCESS Grantee is required to evaluate your infant or toddler, even if it has been determined your child is not suspected of having a disability.

IAC 281-120.320; 34 CFR§303.320

Evaluation and Assessment

- An initial evaluation and assessment of your child and family cannot be conducted to determine whether your child is eligible under Part C of the IDEA and Early ACCESS Rules to receive early intervention services without first providing you with a Prior Written Notice of the proposed action and without obtaining your consent.
- If an evaluation is required to determine a child's continued eligibility, parental consent must be obtained prior to any subsequent evaluation.

Note: Your consent for an initial evaluation and assessment does not mean you have also given your consent for the provision of Early ACCESS services to your child and family.

IAC 281-120.321; 34 CFR§303.321

Early Intervention Services

As a parent, you have the right to:

- Determine whether to accept or decline any Early ACCESS service; and,
- Decline a service after first accepting it, without jeopardizing the provision of other early intervention services.

Once parental consent is provided, Early ACCESS services written in an Individualized Family Service Plan (IFSP) must be implemented as soon as possible.

IAC 281-120.342; 34 CFR§303.342

Public Benefits or Insurance or Private Insurance

- Parents are not required to sign up for or enroll in public benefits or insurance as a condition of receiving Early ACCESS services.
- Early ACCESS services must be provided even if consent to the use of public benefits or insurance is not provided.

IAC 281-120.510; 120.520; 34 CFR§303.510

Disclosure of Personally Identifiable Information

- The release of personally identifiable information to anyone other than authorized personnel of the Early ACCESS Grantee or early intervention service providers which are a part of the Early ACCESS system.
- The use of personally identifiable information for any purpose other than meeting the requirements of Early ACCESS.

IAC 281-120.414; 34 CFR§303.414

Other Information about Parental Consent

Parental consent is not required before the Early ACCESS Grantee or early intervention service providers:

- Review existing data to determine a child's continuing eligibility
- Complete assessments to identify a child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the child's eligibility for Early ACCESS
- Identify resources, priorities, and concerns of your family and determine the supports and services necessary to enhance your family's capacity to meet the developmental needs of your infant or toddler

Refusal to Consent

If a parent has declined to provide consent or did not respond to a request to provide consent to an Early ACCESS evaluation, assessment or services, the Early ACCESS Grantee or early intervention service providers must take reasonable steps to ensure a parent is:

- Fully aware of the nature of the evaluation, assessment, or early intervention services that may be available to your child, and,
- Understands your child will not be able to receive an evaluation, assessment, or early intervention service unless your consent is given.

The Early ACCESS Grantee and early intervention service providers may not use due process procedures to challenge a parent's refusal to provide parental consent.

Revoking Consent

A parent may revoke parental consent at any time. The withdrawal of consent does not negate or undo an action which occurred after parental consent was given and before consent was revoked.

If a parent revokes consent for Early ACCESS services for your child and family, you will receive a Prior Written Notice from the Early ACCESS Grantee or early intervention service providers.

Note: A parent may decline any early intervention service(s) without jeopardizing the provision of other early intervention services.

IAC 281-120.420; 34 CFR§303.420

Participation in Meetings

Parental Participation

The IDEA and Early ACCESS Rules require parents be provided the opportunity to participate in decisions regarding their family's and child's early intervention services. The Early ACCESS Grantee or early intervention service providers must ensure you are provided an opportunity to participate in meetings with respect to:

- Evaluation, assessment and eligibility for Early ACCESS;
- Development and implementation of your IFSP, if eligible;
- Annual review of your IFSP; and
- Transition plans for when your child exits Early ACCESS at 3 years of age.

The IFSP must be reviewed at a minimum of every six months. The periodic review of an IFSP may be at a meeting or by another means acceptable to you and the other IFSP participants. A meeting must be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for your child and family.

Scheduling Meetings

Meetings for Early ACCESS must be conducted:

- In settings and at times that are convenient for you; and,
- In your family's native language or other mode of communication that you use, unless it is not feasible to do so.

You must be a part of making any meeting arrangements. You must be given a written notice of the meeting early enough to ensure you will be available to attend the meeting.

The meeting notice will provide the following information:

- Purpose of the meeting;
- Meeting date and time;
- Location; and,
- Requested participants invited to attend (name and position).

IFSP Meeting Participants

Initial and annual IFSP meetings, as well as IFSP meetings to develop a transition plan for your child, must include the following participants:

- Parent or parents of the child;
- Other family members, as requested by the parent, if feasible to do so;
- Advocate or person outside of the family, if the parent requests the person participate;
- Service coordinator responsible for implementing the IFSP;
- Person or persons directly involved in conducting the evaluations of your child and the assessments of your child and your family; and
- As appropriate, persons who will be providing Early ACCESS services to your child or family.

If you or other participants are unable to attend a meeting, arrangements must be made for the person's involvement through other means to ensure their participation.

Those may include any of the following:

- Participating in a conference call;
- Having a knowledgeable authorized representative attend;
- Making pertinent records available at the meeting.

IAC 281-120.343

Prior Written Notice

A “Prior Written Notice” is written communication to you from the Early ACCESS IFSP team or early intervention service providers when the team proposes or refuses to initiate or change the:

- Identification,
- Evaluation,
- Placement of early intervention services; or
- Provision of early intervention services.

A Prior Written Notice must be given to you about evaluations, eligibility, services and other actions affecting your child within a reasonable time. The Early ACCESS provider or early intervention service providers provide you with written information in a manner which is understandable so you are an informed team member and decision-maker.

The Prior Written Notice must be provided in your native language or other mode of communication, unless it is not feasible to do so. If your native language or other mode of communication is not a written language, the Early ACCESS provider or early intervention service providers must ensure the notice is translated for you orally or by other means in your native language or other mode of communication.

Steps must be taken to ensure you understand the content of the notice.

Information in Prior Written Notice

The Prior Written Notice must include:

- Description of a proposed or refused action;
- Explanation for the proposed or refused action;
- Information on your procedural safeguards and dispute resolution options.

Parents

Who is a parent?

The IDEA and Early ACCESS Rules define “parent” as:

- A biological or adoptive parent of a child;
- 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);
- 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

- A surrogate parent, which may include a foster parent, who has been appointed in accordance with rule 281-120.422(34CFR303) or Section 639(a)(5) of the Act.

Note: The biological or adoptive parent shall be presumed to be the parent under the IDEA unless the biological or adoptive parent does not have the legal authority to make educational or early intervention services decisions for the child. If a judicial order identifies a person or persons to act as “parent” or to make educational or early intervention service decisions that person or persons will be deemed the “parent” under the IDEA. A public agency providing any services to the child or any family member of the child may not be designated as the parent for the child.

Provisions for Surrogate Parents

When is a Surrogate Parent needed?

The Early ACCESS Grantee must ensure that the rights of a child are protected when:

- No parent can be identified;
- After reasonable efforts, a parent cannot be located; or
- The child is a ward of the State under laws of Iowa.
 - In the case of a child who is a ward of the State, the judge presiding over the child’s case alternatively may appoint a surrogate parent who meets the criteria.

AEA Responsibility

The duties of an AEA include the assignment of an individual to act as a surrogate for the parents. This must include a method for:

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

Timeline for Appointing a Surrogate Parent

The AEA must appoint a surrogate not more than 30 days after the AEA determines that the child needs a surrogate parent.

Surrogate Parent Criteria

The AEA may select a surrogate parent in any way permitted under State law. The AEA must ensure that a person selected as a surrogate parent:

- Is not an employee of the Department, AEA, Early ACCESS Grantee, early intervention service providers or any other agency that is involved in the early intervention, education, or care of the child;
- Has no personal or professional interest that conflicts with the interest of the child the parent represents; and
- Has knowledge and skills that ensure adequate representation of the child.

Note: Although a surrogate parent may be paid by an agency, they are not considered an employee of the agency.

Dispute Resolution Options

There are several resolution options if a parent has a disagreement with an Early ACCESS Grantee, early intervention service providers or a public agency involved in Early ACCESS services.

IDEA and Iowa law provide the following dispute resolution options:

- Mediation: May be used to resolve disputes involving any matter under IDEA Part C or Iowa Administrative Code for Early ACCESS.
- Due Process Complaint: May be filed by the parent relating to the identification, evaluation, early intervention placement of a child with a disability or the provision of early intervention services.
- State Complaints: May be filed by any individual or organization upon an allegation that an Early ACCESS Grantee (AEA) or early intervention service providers have violated Part C of IDEA.

IAC 281-120.430

Mediation

The parent, Early ACCESS Grantee or early intervention service providers may request a mediation be held on any dispute involving any matter under IDEA.

A request for a [mediation form](#) is found in the Appendix of this *Procedural Safeguards Manual*.

Mediation may be requested at any time, including:

- Without filing a due process or state complaint;
- Before filing a due process or state complaint; and
- After filing a due process or state complaint.

Mediation Procedures

The mediation procedures must ensure the mediation process is:

- Voluntary;
- Not used to deny or delay the right to a due process hearing or any other rights provided under Part C of IDEA; and
- Conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

Mediators

The Department must:

- Maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of IDEA Part C early intervention services.
- Select mediators on a random, rotational or other impartial basis.

- Bear the cost of the mediation process, including the costs of meetings with a disinterested party when the choice is to not use mediation.

The individual serving as mediator may not be an employee of the Department, Early ACCESS Grantee or any other early intervention service provider involved in the provision of early intervention, education or care of the child and must not have a personal or professional interest which conflicts with the mediator's objectivity. Although mediators are paid by the Department, they are not considered employees of the Department.

Mediation Process

- Mediations must be scheduled in a timely manner and held at a time and place reasonably convenient to all parties.
- Discussions which occur during mediation must remain confidential and may not be used as evidence in any subsequent proceedings.
- If a dispute is resolved through the mediation process, the parties must enter into a legally binding agreement which sets forth the resolution and:
 - States all discussions which occurred during mediation will remain confidential and may not be used as evidence in a subsequent proceeding; and
 - Is signed by you and an authorized representative of the lead agency.
- A written, signed mediation agreement is enforceable in court and through the state complaint process.

Child's Placement During Mediation

The child involved must remain in the child's present early intervention placement while the mediation is pending and for 10 days after any such mediation occurs if no agreement is reached, unless the parties agree otherwise. If the mediation involves an application for initial services, the child must receive those services not in dispute.

Due Process Complaint (also known as a "Request for Due Process Hearing")

Each IDEA Part C Lead Agency has the option of adopting either the IDEA Part C or Part B procedures for due process complaints and hearings. The Department, as Lead Agency, has selected the IDEA Part C due process hearing procedures under Section 639 of IDEA.

Whenever a due process complaint is filed the parties involved in the dispute must have an opportunity for an impartial due process hearing.

- The Department arranges for the hearing.
- A person with the title of Administrative Law Judge ("ALJ") listens to the evidence at a due process hearing and makes a decision.

A model form to file a [due process complaint](#) is found in the Appendix of this *Procedural Safeguards Manual*.

A parent may request a due process hearing on any matter relating to a proposal or refusal to initiate or change actions identified in IDEA Part C or Iowa Administrative Code 281 Chapter 120 for Early ACCESS. The due process complaint may include the following matters relating to Early ACCESS:

- Identification of a child with a disability;
- Evaluation of a child with a disability;

- Placement of a child with a disability, or
- Provision of early intervention services.

Time Limits

The alleged violation forming the basis for the due process complaint must have occurred within two years of the date you knew or should have known about the alleged action.

The two-year timeline does not apply if you were prevented from filing the complaint due to:

- Specific misrepresentations by an Early ACCESS agency or Early ACCESS provider that it had resolved the issue(s) forming the basis of the due process complaint; or
- The agency or Early ACCESS provider failed to provide information to you which was required under the IDEA.

A due process hearing must be completed and a written decision issued to each of the parties no later than 30 calendar days after the receipt of a parent's due process complaint.

Due Process Complaint Requirements

It is important to provide sufficient information when requesting a due process complaint hearing. The information should identify the child, communicate the concerns regarding violations of early intervention requirements, and include any suggestions to resolve the concerns.

The due process complaint should include:

- The name of your child.
- The address of your child's residence.
- The name of the Early ACCESS provider(s) serving your child;
- A description of the nature of the problem relating to the proposed or refused action, including facts relating to the problem.
- A proposed resolution of the problem to the extent known and available to you at the time.

Who Gets Copies of a Due Process Complaint?

A copy of the due process complaint will be sent to:

- Early Intervention Services (EIS) Provider;
- Early ACCESS Grantee;
- Department; and
- Any other parties named.

Hearing Procedures

Whenever a due process complaint is received, the department will appoint an impartial ALJ to implement the complaint process. The ALJ must:

- Have knowledge about the provisions of Part C of IDEA and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and
- Perform the following duties:
 - Listen to the presentation of relevant viewpoints about the due process complaint;

- Examine all information relevant to the issues;
- Seek to reach a timely resolution of the due process complaint; and
- Provide a record of the proceedings, including a written decision.

“Impartial” means that the ALJ appointed to implement the due process hearing:

- Is not an employee of the Department or other agency or EIS provider involved in the provision of early intervention services or care of the child; and
- Does not have a personal or professional interest that would conflict with the ALJ’s objectivity in implementing the process.

A person who otherwise qualifies is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures.

The Department must keep a list of the persons who serve as ALJs. The list must include a statement of the qualifications of each of those persons.

During the hearing, the parties have the right to:

- 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
- Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- 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;
 - All parties must disclose to each other, at least five business days before the hearing, all evaluations completed by that date and recommendations based on those evaluations that you or the other parties intend to use at the hearing.
 - An ALJ may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other parties.
- Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and
- Receive a written copy of the findings of fact and decisions at no cost to the parent.

Additionally, parents have the right to:

- Have the child, who is the subject of the hearing, present;
- Open the hearing to the public; and
- Have the record of the hearing and findings of fact and decisions provided at no cost.

Any party who disagrees with the ALJ’s decision may appeal the decision through a civil action in court. This must be filed within 90 days from the date of the decision of the ALJ. Such action may be brought in state court or federal district court, without regard to the amount in controversy.

Note: Nothing prevents you from filing a separate due process complaint on an issue separate from a due process complaint already filed or decided.

Child’s Placement During Proceedings

The child must remain in his or her current early intervention or educational placement during the period of the impartial due process hearing, unless all parties agree otherwise. If the due process complaint involves an application for initial services, the child must receive those services not in dispute.

Civil Action & Attorney Fees

Before filing a civil action, the due process procedures must be exhausted. This means, a party may not go directly to court; rather, you must first use the available administrative remedies under IDEA detailed above.

The court may award reasonable attorney fees to the prevailing party in any action brought under IDEA. However, attorney fees and related costs may not be reimbursed for services performed subsequent/after the time of a written offer of a settlement to you, unless you were substantially justified in rejecting the settlement offer.

If your attorney filed a due process complaint, the court, in its discretion, may award reasonable attorney fees to a prevailing agency or provider if the court finds the due process complaint is:

- Frivolous, unreasonable or without foundation; or
- Continues to litigate after the litigation clearly becomes frivolous, unreasonable or without foundation; or
- Was presented for any improper purpose, such as; to harass, cause unnecessary delay, or unnecessarily increase the cost of the action.

An award of attorney fees may be reduced if the court finds:

- You, or your attorney, unreasonably protracted the final resolution of the controversy;
- The amount unreasonably exceeds the hourly rate prevailing in the community;
- The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- The attorney representing the parent did not provide the public agency the appropriate information in the due process complaint.

However, The provision of reducing attorney fees does not apply if the court finds the public agency or provider:

- Unreasonably protracted the final resolution of the action, or
- There was a violation of Section 615 of IDEA, the IDEA procedural safeguards section.

State Complaints

Any individual or organization may file a state complaint alleging a public agency or Early ACCESS provider violated a requirement of Part C of the IDEA or Iowa Administrative Code 281 Chapter 120.

A model form to file a [state complaint](#) is found in the Appendix of this *Procedural Safeguards Manual*.

State Complaint Requirements

The state complaint must include:

- A statement that a public agency or Early ACCESS provider has violated a requirement of Part C of IDEA or Iowa Administrative Code 281 Chapter 120 and the facts on which the statement is based;
- The signature and contact information for the complainant; and
- If alleging violations about a specific child:
 - The name and address of residence of the child;
 - The name of the Early ACCESS provider;
 - A description of the nature of the problem and the related facts; and
 - 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 state complaint must forward a copy of the complaint to the public agency or Early ACCESS provider serving the child at the same time the party files the complaint with the Department.

If a state complaint is received that is also the subject of a due process hearing, the State must set aside the state complaint until the conclusion of the hearing.

If an issue in a state complaint has been decided in a due process hearing involving the same parties:

- The due process hearing decision is binding on that issue; and
- The Department, as Lead Agency, must inform the filer of the state complaint to that effect.

Time Limits & Process

The state complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

The Department has 60 calendar days after a state complaint is filed to:

- Carry out an independent on-site investigation, if the Department determines that an investigation is necessary;
- Give the filer of the state complaint the opportunity to submit additional information, either orally or in writing, about the allegations in the state complaint;
- Provide the agency or provider named in the complaint with the opportunity to respond to the state complaint, including, at a minimum:
 - At the discretion of the Department, a proposal to resolve the state complaint; and
 - With the consent of the parent (or the individual or organization that filed the state complaint), an opportunity for the parties to engage the parent in mediation, or alternative means of dispute resolution.
- Review all relevant information and make an independent determination as to whether the agency or provider named in the complaint is violating a requirement of IDEA.
- Issue a written decision to the filer of the state complaint that addresses each allegation in the state complaint and contains:
 - Findings of fact and conclusions; and
 - The reasons for the Department's final decision.

An extension of the 60-day time limit is allowed if:

- Exceptional circumstances exist with respect to a particular complaint; or
- The parties agree to extend the time to conduct mediation or other dispute resolution activities.

Founded Complaints

If the Department finds a failure to provide appropriate services, the Department must address:

- The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; and
- Appropriate future provision of services for all children with disabilities.

Important Notice To Parents

Federal law requires that this information on how Early ACCESS is financed be provided to families whenever Early ACCESS seeks to use public or private insurance.

Iowa Department of Education, Lead Agency

Early ACCESS Integrated System of Early Intervention Services

Part C of the Individuals with Disabilities Education Act

System of Payments Policies, As Revised

As adopted March 29, 2012, and published April 28, 2012, Technical Conforming Correction, June 2013.

The Iowa Department of Education has adopted the following system of payments policy, most recently modified by administrative rules noticed by the Iowa State Board of Education on January 26, 2012, and adopted March 29, 2012.

I. Early ACCESS Services shall be “free.”

Iowa is a “birth mandate” (also known as a “FAPE mandate”) state. See Iowa Code § 256B.2 (2011). Iowa offers a “free and appropriate public education” (“FAPE”) to children with disabilities under twenty-one years of age who require special education. Id. § 256B.2(3).

For that reason, the Department assures that it does not charge parents for any services under this Part that are part of a child’s FAPE under Iowa Code chapter 256B.

II. The Department or the Early ACCESS Grantees may seek to use a family’s public insurance or benefits under Title XIX of the Social Security Act (“Medicaid”).

Early ACCESS Grantees and other providers may seek to access a family’s Medicaid coverage. Early ACCESS providers shall not require a parent to enroll in or sign up for public benefits or insurance as a condition of receiving Early ACCESS services and must obtain consent before using a parent’s or child’s public insurance or benefits, if that child or parent is not already enrolled in such a program.

Nature and Amount of Medicaid Reimbursement.

Coverage benefits reimburse the provider for the cost of specified Early ACCESS services. The Iowa Department of Health and Human Services determines the amount of payments and covered services. Payment shall not exceed the provider’s actual cost of providing the covered service.

Functions or Services Subject to System of Payments.

According to the Department of Health and Human Services, reimbursement under Medicaid “will be made for medically necessary audiology, developmental services, health and nursing services, medical, transportation services, nutrition services, occupational therapy services, physical therapy services, psychological evaluation and counseling, social work, speech-language services, vision services, and service coordination or case management services.” To be covered by Medicaid and subject of reimbursement, a service must be listed in or linked to a service in a child’s Individualized Family Service Plan (IFSP).

To access public benefits or insurance, such as Medicaid, the provider must provide the parent with a notice substantially similar to the one attached as Appendix A and must meet the “no cost” provisions attached as Appendix B.

The Department does not require parents to pay any co-payments or deductibles under Medicaid. Consistent with its rules implementing Title XIX of the Social Security Act, the Department of Health and Human Services will require the use of any available private insurance whenever it provides Medicaid reimbursement for a service. That policy is in the notice attached as Appendix A and in the next division.

If a parent does not provide consent to using Medicaid or to sharing of personally identifiable information with the Department of Health and Human Services for purposes of Medicaid billing, the Department and Early ACCESS providers will not use available Medicaid benefits.

III. The Department of Health and Human Services will seek reimbursement from available private health insurance coverage whenever it pays a claim under Title XIX of the Social Security Act (“Medicaid”).

Title XIX of the Social Security Act requires the Department of Health and Human Services to seek reimbursement from available private insurance policies or coverage whenever the Department of Health and Human Services pays a Medicaid claim.

Whenever the Department or an Early ACCESS provider seeks to use a child’s or parent’s Medicaid coverage and a parent or child has available private health insurance coverage, the Department or Early ACCESS service provider will seek parental consent to access private insurance, as described below.

Nature and Amount of Private Insurance Coverage.

Coverage 27 benefits reimburse the Department of Health and Human Services for Medicaid payments. The private insurance carrier determines the amount of payments and covered services. Payment shall not exceed the provider’s actual cost of providing the covered service.

Functions or Services Subject to System of Payments.

The functions or services subject to payment from private insurance must meet the “Functions or Services” criteria in Division II (above), and be a covered service under the applicable private insurance policy. The private insurance carrier determines whether a particular Early ACCESS service is a covered service under the policy it has written.

Parental consent to use private insurance coverage must be obtained in the following cases:

- When a public agency or Early ACCESS provider seeks to use a parent's or child's private insurance or benefits to pay for the initial provision of an EARLY ACCESS service in the IFSP; and
- Each time consent for services is required under Early ACCESS rule 281—120.420(1) due to an increase (in frequency, length, duration, or intensity) in the provision of services in a child's IFSP.

The Department does not require a parent to pay any costs that a parent would incur as a result of the state's use of private insurance to pay for Early ACCESS services (such as copayments, premiums, premium increases, or deductibles). Upon parental request, the appropriate public agency reimburses parents for those expenses.

When obtaining consent required for use of private insurance or benefits or initially using benefits under a child's or a parent's private insurance policy to pay for an Early ACCESS service, the State provides the parent with a copy of the Department's system of payments policies. These are the potential costs a parent may incur when the parent's private insurance is used to pay for Early ACCESS services:

- Copayments, premium increases, or deductibles (all of which will be reimbursed), and
- Other long-term costs, such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy.

If a parent has questions about private insurance coverage, the parent contacts the private health insurance provider. The service coordinator may assist in facilitating that conversation.

If a parent withholds consent to use the parent's or the child's private insurance as part of a Medicaid claim, the Department and the Early ACCESS service provider will not file a claim for Medicaid reimbursement.

If a parent withholds consent to use the parent's or the child's private insurance as part of a Medicaid claim, the agency must still make available those Early ACCESS services on the IFSP for which the parent has provided consent.

IV. The Department and its Early ACCESS Grantees do not seek access to private health insurance coverage when it is not associated with a claim under Title XIX of the Social Security Act ("Medicaid").

Although the Department's administrative rules are written to allow public agencies to request access to private health insurance in all instances, it is not currently the policy or practice of the State of Iowa to seek access to private insurance coverage when that private insurance coverage is not associated with Medicaid claims to pay for Early ACCESS services. No change to that policy has been proposed.

While a rule incorporating 34 C.F.R. § 303.520(b)(2) has been adopted by the Department, the Department cannot exercise that option because no statute required by that rule has yet been passed.

V. Other Elements: Iowa's Early ACCESS System of Payments

The Department has adopted a "payor of last resort" policy by administrative rule. That rule is in Appendix C.

This policy and the administrative rules it implements are intended to comply with 34 C.F.R. § 303.521.

This policy describes the functions or services that are subject to Iowa's system of payments, in Divisions II and III, as well as the manner of calculating the amount of reimbursement (which shall not exceed the actual cost of providing such services).

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Due to Division I of this policy, ability or inability to pay is not a part of Iowa's system of payments. To the extent that Medicaid eligibility is based on income or asset limits, the Iowa Department of Health and Human Services sets those limits in accordance with Title XIX of the Social Security Act.

Iowa's Early ACCESS rules contain the following assurances.

- Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified in this Division and Division I).
- Early ACCESS providers will not seek reimbursement for an amount greater than the actual cost of providing Early ACCESS services.
- Families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance.

The required assurance on inability to pay is not relevant, based on Division I.

If a family fails to provide required income or asset information to the Department of Health and Human Services, the family may not be eligible for Medicaid coverage.

The Department or an Early ACCESS service provider may use Part C or other funds to pay for costs such as premium increases, deductibles, or copayments.

The family fees rules and insurance proceeds rules in 34 C.F.R. § 303.520(d)-(e) and 303.521(d) are adopted by the Iowa Department of Education, in Iowa Administrative Code rule 281—120.520(4)-(5) and 281—120.521(4), respectively.

- The following functions are not subject to fees.
- Implementing Early ACCESS's child find requirements
- Evaluation and assessment and the functions related to evaluation and assessment
- Service coordination services
- Administrative and coordinative activities related to:
 - The development, review, and evaluation of IFSPs and interim IFSPs; and
 - Implementation of Early ACCESS procedural safeguards and the other components of Early ACCESS in rules 281—120.300 through 281—120.346

Procedural Safeguards.

A parent who wishes to contest the imposition of a fee, or the state's determination of the parent's ability to pay, may do any of the following:

- Participate in mediation.
- Request a due process hearing.
- File a state complaint.
- Use any other procedure established by the state for speedy resolution of financial claims (such as an administrative appeal of Medicaid coverage with the Iowa Department of Health and Human Services), provided that such use does not delay or deny the parent's procedural rights under Early ACCESS, including the right to use, in a timely manner, any of the first three bulleted items in this paragraph.

The Department must inform parents of these procedural safeguard options in either of the following ways:

- Providing parents with a copy of the state's system of payments policies when obtaining consent to provide Early ACCESS services under Early ACCESS rule 120.420(1); or
- Including this information with the notice provided to parents under Early ACCESS rule 281—120.421.

VI. Authorities

Iowa Code ch. 256B (2011)

34 C.F.R. § 303.510 (2011)

34 C.F.R. § 303.520 (2011)

34 C.F.R. § 303.521 (2011)

Iowa Admin. Code r. 281—120.510 (2024)

Iowa Admin. Code r. 281—120.520 (2024)

Iowa Admin. Code r. 281—120.521 (2024)

Definitions

Because the language used in IDEA and Early ACCESS Rules is specific, commonly used terms are defined to help you understand your rights. For example, the terms 'must' and 'shall' in the law are different from 'may'. The use of 'must' and 'shall' are actions which are required to be completed, and 'may' suggests there is a choice of whether an action is completed.

Contact your Early ACCESS service coordinator, service provider, or the Early ACCESS Grantee if you have additional questions or want more information on any of the terms used in the Procedural Safeguards Manual.

Early ACCESS Grantee: A recipient of funds under IDEA Part C or state funds designated for Early ACCESS and have the fiscal and legal obligation to ensure the Early ACCESS system is implemented regionally. Early ACCESS Grantees are designated by the Iowa Department of Education and exist in geographic areas that ensure statewide coverage. Each Area Education Agency (AEA) is designated as an Early ACCESS Grantee in Iowa and serves as the early intervention services (EIS) program under IDEA Part C.

Early Intervention Records: All records regarding a child that are required to be collected, maintained, or used under IDEA Part C and Early ACCESS Rules. Reference to education records or records means early intervention records.

Early Intervention Services or Early ACCESS Services: Early intervention services are provided under public supervision; selected in collaboration with the parents; and at no cost except where Federal or State law provides for a system of payments. Early intervention services are designed to meet the unique needs of an infant or toddler with a disability and the priorities of the family. The services may support a child's needs in one or more of the following developmental areas: physical, cognitive, communication, social/emotional, or adaptive development. Early ACCESS is a synonym for early intervention.

Individualized Family Service Plan or IFSP: An Individualized Family Service Plan (IFSP) is a written plan for providing early intervention services based on the evaluation and assessment. It is a record of the early intervention services developed, reviewed, and revised with an IFSP Team. The IFSP sets forth in writing a commitment of resources necessary to provide appropriate services to meet your child's needs.

Individualized Family Service Plan or IFSP Team: An IFSP Team is a group of individuals that is responsible for developing, reviewing, or revising an IFSP for a child with a disability.

Infant or Toddler with a Disability: An individual under 3 years of age who needs early intervention services because of developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of development including cognitive, physical, communication, social/emotional, and adaptive; or because of a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

Participating Agency: Any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements of IDEA Part C and Early ACCESS Rules with respect to a child. This includes the Iowa Department of Education, Early ACCESS Grantees, Early ACCESS providers, and any individual or entity that provides early intervention services.

Public Agency: The Lead Agency, designated as the Iowa Department of Education (Department) and any other early intervention service provider or political subdivision of the State are responsible for providing early intervention services to children eligible under IDEA Part C and Early ACCESS Rules. The Department is responsible for establishing or adopting the procedural safeguards that include the

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provisions of confidentiality, parental consent and notice, surrogate parents, and the dispute resolution
procedures.

Appendix A

Written Notification Regarding Early ACCESS Use of Medicaid

Before the Department of Education (“Department”) or Early ACCESS service provider uses your public benefits or insurance, or your child’s public benefits or insurance, to pay for Early ACCESS service, the agency must provide written notification to you. Please carefully read the following statements.

Medicaid

- Parental consent must be obtained under Early ACCESS rule 281— 120.414(34CFR303) (if that rule applies) before the Department or Early ACCESS provider discloses, for billing purposes, your child’s personally identifiable information to the Department of Health and Human Services, the state public agency responsible for the administration of the state’s Medicaid program.
- Parents have the right under Early ACCESS rule 281— 120.414(34CFR303) (if that rule applies) to withdraw their consent to disclosure of personally identifiable information to the Department of Health and Human Services for Medicaid billing purposes, at any time.
- Neither the Department nor any Early ACCESS service provider may require you to sign up for or enroll in public benefits or insurance programs as a condition of receiving Early ACCESS services and must obtain your consent prior to using your public benefits or insurance or the public benefits or insurance of your child if you or your child is not already enrolled in such a program. The Department or Early ACCESS service provider must obtain your consent to use your child’s or your public benefits or insurance to pay for Early ACCESS services if that use would:
 - Decrease available lifetime coverage or any other insured benefit for your child or you under that program;
 - Result in your paying for services that would otherwise be covered by the public benefits or insurance program;
 - Result in any increase in premiums or discontinuation of public benefits or insurance for you or your child; or
 - Risk loss of eligibility for you or your child for home- and community-based waivers based on aggregate health- related expenditures.
- If you do not provide consent, the agency must still make available those Early ACCESS services on the IFSP for which you have provided consent.
- Neither the Department nor any Early ACCESS provider will charge you any copayments or deductibles for use of public benefits or insurance, such as Medicaid. If there is available private health insurance coverage, the Department of Health and Human Services is required by the law governing Medicaid to seek access to it.

Private Insurance Coverage When Medicaid-Eligible

- The Department may not use your private insurance to pay for Early ACCESS services unless you provide consent to use that private insurance to pay for Early ACCESS services for your

child. This includes the use of private insurance when using available private insurance is required before using public benefits or insurance, such as Medicaid.

- Your consent to use private insurance coverage must be obtained:
 - When a public agency or Early ACCESS provider seeks to use your private insurance or benefits to pay for the initial provision of an EARLY ACCESS service in the IFSP; and
 - Each time consent for services is required under Early ACCESS rule 281—120.420(1) due to an increase (in frequency, length, duration, or intensity) in the provision of services in your child's IFSP.
- The Department does not require you to pay any costs that you would incur as a result of the state's use of private insurance to pay for Early ACCESS services (such as copayments, premium increases, or deductibles). Upon your request, the appropriate public agency reimburses parents for those expenses.
- When obtaining your consent required for use of private insurance or benefits or initially using benefits under your child's or your private insurance policy to pay for an Early ACCESS service, the State provides the parent with a copy of the Department's system of payments policies. These are the potential costs you may incur when the parent's private insurance is used to pay for Early ACCESS services:
 - Copayments, premium increases, or deductibles (all of which will be reimbursed), and
 - Other long-term costs, such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy. If you have any questions about private insurance coverage, you can contact your private health insurance provider. Your service coordinator may be able to assist you with this matter.
- If you withhold your consent to use your private insurance or your child's private insurance as part of a Medicaid claim, the Department and the Early ACCESS service provider will not file a claim for Medicaid reimbursement.
- If you do not provide consent to use your private insurance or your child's private insurance as part of a Medicaid claim, the agency must still make available those Early ACCESS services on the IFSP for which you have provided consent.

Appendix B Use of Medicaid: “No Cost” Provisions

281—120.520(34CFR303) Policies related to use of public benefits or insurance or private insurance to pay for Early ACCESS services.

120.520(1) Use of public benefits or public insurance to pay for Early ACCESS services.

b. With regard to the state’s using the public benefits or insurance of a child or parent to pay for Part C services, the state:

(1) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program;

(2) Must obtain consent, consistent with rule 281— 120.7(34CFR303) and subrule 120.420(1), to use a child’s or parent’s public benefits or insurance to pay for Part C services if that use would:

1. Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;
2. Result in the child’s parents paying for services that would otherwise be covered by the public benefits or insurance program;
3. Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child’s parents; or
4. Risk loss of eligibility for the child or that child’s parents for home- and community-based waivers based on aggregate health-related expenditures.

(3) If the parent does not provide consent under paragraph 120.520(1)“b,” the state must still make available those Part C services on the IFSP to which the parent has provided consent.

Appendix C “Payor of Last Resort” Provisions

281—120.510(34CFR303) Payor of last resort.

120.510(1) Nonsubstitution of funds, Except as provided in subrule 120.510(2), funds under this chapter may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of Part C of the Act. Therefore, funds under this chapter may be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other federal, state, local, or private source (subject to rules 281—120.520(34CFR303) and 281—120.521(34CFR303)).

120.510(2) Interim payments—reimbursement. If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child’s family, funds under Part C of the Act may be used to pay the provider of services (for services and functions authorized under this chapter, including health services, as defined in rule 281— 120.16(34CFR303) (but not medical services); functions of the child find system described in rules 281—120.115(34CFR303) through 281— 120.117(34CFR303) and rules 281—120.301(34CFR303) through 281— 120.320(34CFR303); and evaluations and assessments in rule 281— 120.321(34CFR303)), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

120.510(3) Nonreduction of benefits. Nothing in this chapter may be construed to permit a state to reduce medical or other assistance available in the state or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. 701 et seq. (SSA) (relating to maternal and child health) or Title XIX of the SSA, 42 U.S.C. 1396 (relating to Medicaid), including Section 1903(a) of the SSA regarding medical assistance for services furnished to an infant or toddler with a disability when those services are included in the child’s IFSP adopted pursuant to Part C of the Act.

Appendix D Model Forms

[Model Form: IDEA Request for Mediation](#): Use form to request a medication conference.

[Model Form: Due Process Complaint \(Request for Due Process Hearing\)](#): Use form to file a due process complaint and request a due process hearing.

[Model Form: IDEA State Complaint](#): Use form to file an IDEA state complaint.

Model Form: IDEA Request for Mediation

In submitting this form, you are requesting a mediation session to resolve a disagreement between families and the school district and/or AEA in regards to a learner who is receiving early intervention or special education services as required by IDEA (Individuals with Disabilities Education Act).

Mediation is a voluntary process in which an impartial mediator assigned by the Iowa Department of Education will help the parties in resolving differences through discussing the issues at hand, with a goal of coming to a mutually agreeable solution. When an agreement is reached, a legally binding agreement is written and signed by both parties. This agreement is then enforceable in any state court of competent jurisdiction or in a district court of the United States. A "shepherd" is assigned to address any issues that may result during implementation of the agreement.

A mediation session may be requested as part of other dispute resolution options (state complaint or due process) or outside of those processes. Once your request is received, additional information will be sent regarding the next steps in the mediation process.

You may either use this form or submit a written signed statement that includes the required information below. Please attach additional documents as needed. The use of an asterisk (*) indicates the information is required.

To file your request, send copies to:

(1) the LEA(s), AEA(s) or other public agency involved, and

(2) the Iowa Department of Education at ideadisputeresolution@iowa.gov or Grimes State Office Building, 400 E. 14th St., Des Moines, IA 50319-0146

Date: _____

I am filing a mediation request. I am requesting that the Iowa Department of Education assign a mediator to help resolve a disagreement involving the requirements of the Individuals with Disabilities Education Act and its implementing rules and regulations.

*Child's Name: _____ Alternate Name, if applicable: _____

Child's Date of Birth: _____

*Child's Address: _____

*City: _____ *State: _____ *Zip: _____

Is the child "homeless?" ☐ Yes ☐ No.

If so, provide contact information for the child: _____

If the child is age 3 or above, the school district where child **lives**: _____

Address: _____

City: _____ State: _____ Zip: _____

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If the child is age 3 or above, the school district where child **attends**: _____

Address: _____

City: _____ State: _____ Zip: _____

If the child is age 3 or above, name of **school building** that child attends: _____

For **Early ACCESS** (ages birth to 3), the AEA that provides services for the child: _____

*Parent/Guardian 1 Name: _____ Signature: _____

*Address: _____

*City: _____ *State: _____ *Zip: _____

*Telephone: _____ E-mail (if available): _____

Parent/Guardian 2 Name: _____ Signature: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ E-mail (if available): _____

1. *The nature of the problem:

2. *The facts of the case relating to the problem:

3. *Your proposed resolution to the problem:

Is this form completed by someone other than the parent? ☐ Yes ☐ No.

If yes, provide your name, your contact information, and your relationship to parent, if different from above: _____

*Do you elect to receive notices and communications via email? ☐ Yes ☐ No. (If no, all notices and communications will be sent via U.S. mail.)

If yes, what email address would you like notices and communications sent to? _____

Model Form: Due Process Complaint (Request for Due Process Hearing)

In submitting this form, you are requesting a due process hearing to resolve a disagreement between families and a public agency in regards to a learner who is receiving early intervention or special education services as required by IDEA (Individuals with Disabilities Education Act). A due process hearing is a formal event that occurs when disputes arise over a child's early intervention (Early ACCESS) or special education identification, evaluation, placement, or the provision of FAPE (Free Appropriate Public Education). The process is started when a person, school, or agency submits a written request for a due process hearing – also known as a “due process complaint”— with the Iowa Department of Education. Attorneys are typically involved in this process. An administrative law judge assigned by the Iowa Department of Education is in charge of the due process hearing. A due process hearing occurs only after mediation or a resolution session occurs, unless the parties agree otherwise. A due process hearing most closely resembles going to court. During the hearing, both sides present their case. Upon hearing both sides and reviewing the submitted information, the administrative law judge makes a decision. This decision is final unless a party who disagrees with it appeals the decision to state or federal district court.

You may either use this form or submit a written signed statement that includes the required information below. Please attach additional documents as needed. The use of an asterisk (*) indicates the information is required.

To file your due process complaint, send copies to:

(1) the LEA(s), AEA(s) or other public agency involved, and

(2) the Iowa Department of Education at ideadisputeresolution@iowa.gov or Grimes State Office Building, 400 E. 14th St., Des Moines, IA 50319-0146

Please select one of the following:

- ☐ I am the parent or guardian of the student.
- ☐ I am a parent representative.
- ☐ I am the school district or local LEA representative.
- ☐ I am the adult student

Is this complaint based on Suspension/Expulsion or a Manifestation Determination? ☐ Yes ☐ No

I am filing a due process complaint. I request a due process hearing before an administrative law judge appointed by the Iowa Department of Education.

*Child's Name: _____ Alternate Name, if applicable: _____

Child's Date of Birth: _____

*Child's Address: _____

*City: _____ *State: _____ *Zip: _____

Is the child “homeless?” ☐ Yes ☐ No.

*If yes, provide contact information for the child: _____

If the child is age 3 or above, the school district where child **lives**: _____

Address: _____

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City: _____ State: _____ Zip: _____

*If the child is age 3 or above, the school district where child **attends**: _____

Address: _____

City: _____ State: _____ Zip: _____

If the child is age 3 or above, name of **school building** that child attends: _____

For **Early ACCESS (ages birth to 3)**, the AEA that provides services for the child: _____

Parent/Guardian 1 Name: _____ Signature: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ E-mail (if available): _____

Parent/Guardian 2 Name: _____ Signature: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ E-mail (if available): _____

1. *The nature of the problem:

2. *The facts of the case relating to the problem:

3. *Your proposed resolution to the problem:

Is this form completed by someone other than the parent? ☐ Yes ☐ No.

If yes, provide your name, your contact information, and your relationship to parent, if different from above:

Do you elect to receive notices and communications via email? ☐ Yes ☐ No. (If no, all notices and communications will be sent via U.S. mail.)

If yes, what email address would you like notices and communications sent to? _____

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The law requires the parties be provided an opportunity to engage in mediation. Mediation is a voluntary process available at no cost to the parties.

Are you interested in engaging in mediation? ☐ Yes ☐ No

Signature of Complainant: _____ Date: _____

Model Form: IDEA State Complaint

This form may be used to file a state complaint with the Iowa Department of Education.

In this process, an individual or organization who believes a school district (LEA), Area Education Agency (AEA), State Education Agency (SEA), or other public agency has violated a requirement of the Individuals with Disabilities Education Act ("IDEA") and/or the Iowa Rules of Early ACCESS or Special Education may file a state complaint with the Iowa Department of Education. The complaint must be submitted in writing and include a description of the problem and a proposed resolution. The following model form may be used to submit a complaint. The Department will then conduct an independent investigation and issue a finding within 60 calendar days of receiving the complaint. If it is determined that the public agency is in violation of the law, the Department will issue corrective action.

To file your complaint, send copies to:

- (1) the LEA(s), AEA(s) or other public agency involved, and
- (2) the Iowa Department of Education at ideadisputeresolution@iowa.gov or Grimes State Office Building, 400 E. 14th St., Des Moines, IA 50319-0146

You may either use this form or submit a written signed statement that includes the required information below. Please attach additional documents as needed. The use of an asterisk (*) indicates the information is required.

Complainant Information

I am filing a state complaint. I request an investigation by the Iowa Department of Education. I allege the violation of a requirement of the IDEA, its implementing regulations, and/or Iowa special education law.

*Name: _____ Role/Agency: _____

*Address: _____

*City: _____ *State: _____ *Zip: _____

*Telephone: _____ E-mail (if available): _____

Do you elect to receive notices and communications via email? ☐ Yes ☐ No. (If no, all notices and communications will be sent via U.S. mail.)

If yes, what email address would you like notices and communications sent to? _____

*Is this Complaint about a specific child? ☐ Yes ☐ No.

If yes, please fill out the following information:

*Child's Name: _____ Alternate Name, if applicable: _____

Child's Date of Birth: _____

*Child's Address: _____

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*City: _____ *State: _____ *Zip: _____

Is the child "homeless?" ☐ Yes ☐ No.

If so, provide contact information for the child: _____

If the child is age 3 or above, the School District where child **lives**: _____

Address: _____

*City: _____ *State: _____ *Zip: _____

If the child is age 3 or above, the School District where child **attends**: _____

Address: _____ -

City: _____ State: _____ Zip: _____

If the child is age 3 or above, name of **school building** that child attends: _____

For **Early ACCESS** (ages birth to 3), the AEA that provides services for the child: _____

1. *The nature of the problem:

2. *The facts of the case relating to the problem:

3. *Your proposed resolution to the problem:

*Did this alleged violation occur not more than one year prior to the date the Iowa Department of Education received this complaint? ☐ Yes ☐ No.

Is this form completed by someone other than the parent? ☐ Yes ☐ No.

If yes, please provide the name and contact information for the parent(s).

Is there someone else not listed on this form who is the child's parent or guardian? ☐ Yes ☐ No.

If yes, please provide that person's name, contact information, and relationship to the child.

The law requires the parties to a complaint be provided an opportunity to engage in mediation.

IAC 281-41.152(1)(c)(2); IAC 120.430(2).

Are you interested in engaging in mediation? ☐ Yes ☐ No.

*Signature of Complainant: _____ Date: _____

☐ I confirm that a copy of this complaint has been provided to the named LEA, AEA or public agency serving the child.