

PROCEDURAL SAFEGUARDS

Introduction

The Kansas Infant-Toddler Services/tiny-k, with emphasis on developing and providing family-guided services with parents as partners, requires safeguards concerning resolution of conflicts, access to records, and confidentiality of information. These safeguards are responsive to the needs of the child and family and result in timely conflict resolution.

I. Definitions Used in This Section

A. *Parent* means

1. a natural or adoptive parent(s) of a child;
2. a guardian (the term does not include the state if a child is a ward of the state, and does not include Social and Rehabilitation Services case workers);
3. a person acting in place of a parent (including a grandparent, stepparent, or other relative with whom the child lives, or a person who is legally responsible for the child's welfare);
4. a child advocate who has been appointed according to Part C procedures in this section; or
5. foster parents only if they have been trained and appointed as child advocates.

Federal Regulations 1997

34 C.F.R. 303.19 Parent.

- (a) General. As used in this part, "parent" means —
- (1) A natural or adoptive parent of a child;
 - (2) A guardian;
 - (3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or
 - (4) A surrogate parent who has been assigned in accordance with Sec. 303.406.
- (b) Foster parent. Unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part C of the Act if —
- (1) The natural parents' authority to make the decisions required of parents under the Act has been extinguished under State law; and
 - (2) The foster parent--
 - (i) Has an ongoing, long-term parental relationship with the child;
 - (ii) Is willing to make the decisions required of parents under the Act; and
 - (iii) Has no interest that would conflict with the interests of the child.
- (Authority: 20 U.S.C. 1401(19), 1431-1445)

B. *Consent* means that

1. the parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;
2. the request for consent describes the activity and lists the records (if any) that will be released and to whom. The parent or parents understand and agree in writing to the carrying out of the activity for which consent is sought; and

3. the parent understands that the granting of consent is voluntary on the part of the parent or parents and may be withdrawn at any time.

C. *Native language*, when used with respect to an individual who is limited English proficient, means the following:

1. the language or mode of communication normally used by that individual, or, in the case of a child, the language or mode of communication normally used by the parents of the child, except as provided in item 2 below.
2. in all direct contact with a child (including evaluation of the child), the language or mode of communication normally used by the child in the home or learning environment.
3. for an individual with deafness or blindness, or for an individual with no written language, the term *native language* means the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).

D. *Personally identifiable* means information that includes:

1. the name of the child, the child's parent, or other family member;
2. the address of the child or child's family;
3. a personal identifier, such as the child's or parent's social security number or student number; or
4. a list of personal characteristics or other information that would make the child's or parent's identity easily traceable.

Federal Regulations 1997

34 C.F.R. 303.401 Definitions of consent, native language, and personally identifiable information.

- (a) Consent means that—
- (1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;
 - (2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
 - (3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;
- (b) Native language, where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;
- (c) Personally identifiable means that information includes—
- (1) The name of the child, the child's parent, or other family member;
 - (2) The address of the child;
 - (3) A personal identifier, such as the child's or parent's social security number; or
 - (4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.
- (Authority: 20 U.S.C. 1439)

E. *Impartial*, when applied to the mediator or hearing officer, means that the person appointed to implement the complaint resolution process

1. is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child;
2. does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process; and
3. otherwise qualifies under this definition and is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

Federal Regulations 1997

34 C.F.R. 303.421 Appointment of an impartial person.

(a) Qualifications and duties.

Whenever a due process complaint is received under this part, a due process hearing officer must be appointed to implement the complaint resolution process in this subpart. The person must—

(1) Have knowledge about the provisions of this part and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and

(2) Perform the following duties:

(i)(A) Listen to the presentation of relevant viewpoints about the due process complaint.

(B) Examine all information relevant to the issues.

(C) Seek to reach a timely resolution of the due process complaint.

(ii) Provide a record of the proceedings, including a written decision.

(b) *Definition of impartial.* (1) As used in this section, impartial means that the person appointed to implement the complaint resolution process—

(i) Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this part.

(Authority: 20 U.S.C. 1439(a)(1))

- F. *Education records* includes all early intervention records required to be collected, maintained, or used under Part C of IDEA and the regulations, including reports, letters, or other documents that are collected, maintained, or used by the agency in the screening, evaluation, development of an Individualized Family Service Plan (IFSP) and/or in the delivery of services, or both.
- G. *Mediation* means the process by which participants, with the assistance of a neutral person, resolve a dispute through discussion of options, alternatives and negotiation.
- H. *Due process hearing* means a formal hearing process that provides the family or the agency providing the services a forum for considering individual child complaints by an impartial decision-maker.
- I. *Evaluation* means the methods used to review the assessments of the child and family by appropriate qualified personnel to establish a child's initial and continuing eligibility under the Kansas Infant-Toddler Services/tiny-k (Part C of IDEA), including level of functioning in each of the following developmental areas: (1) cognitive; (2) physical, including health, motor, vision, and hearing; (3) communication; (4) social or emotional; and (5) adaptive/self-help development.
- J. *Assessment* means the initial and ongoing procedures used by appropriately qualified personnel throughout the period of a child's eligibility for the Kansas Infant-Toddler Services/tiny-k (Part C of IDEA) to identify
1. the child's unique strengths and needs;
 2. the family's resources, priorities, and concerns related to development of the child; and
 3. the nature and extent of early intervention services that are needed by the child and the child's family to meet the needs of the child and family.

- K. *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- L. *Participating agency* means any individual, agency or institution that collects, maintains, or uses personally identifiable information and includes the lead agency and early intervention services providers.

Federal Regulations 1997

34 C.F.R. 303.322 Evaluation and assessment.

(b) Definitions of evaluation and assessment. As used in this part—

(1) Evaluation means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of "infants and toddlers with disabilities" in Sec. 303.16, including determining the status of the child in each of the developmental areas in paragraph (c)(3)(ii) of this section.

(2) Assessment means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under this part to identify—

- (i) The child's unique strengths and needs and the services appropriate to meet those needs; and
- (ii) The resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability.

Kansas State Regulations 1997

K.A.R. 28-4-550. Definitions.

(n) "Mediation" means the community-based process by which participants, together with the assistance of a neutral person, move toward resolution or resolve a dispute within the community through discussion of options, alternatives, and negotiation.

(p) "Records" means reports, letters, or other documents that are collected, maintained, or used by the agency in the screening, evaluation, and development of the individualized family service plan or in the delivery of services, or both.

II. Procedural Safeguards

Kansas Infant-Toddler Services/tiny-k networks contracted with the Kansas Department of Health and Environment (KDHE) Kansas Infant-Toddler Services/tiny-k, or providers associated with a local lead agency, must ensure, either independently or through their local lead agency, that the procedural safeguards are followed and enforced. See Appendix A for Sample Forms and Parent Rights Brochure http://www.ksits.org/download/Parents_Rights_Booklet.pdf

A. Prior Written Notice and Procedural Safeguards Notice [34 C.F.R. 303.403]

1. Prior written notice and the procedural safeguards notice must be given to the parents of a child a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child or the provision of appropriate early intervention services to the child and the child's family.
2. Content of the prior written notice and the procedural safeguards notice shall be in sufficient detail to inform the parents about
 - a. the action that is being proposed or refused;
 - b. the reasons for taking the action; and

- c. all procedural safeguards that are available under Part C, including mediation, filing a complaint with the state, a due process complaint, and any timelines under those procedures.
3. Native Language [34 C.F.R. 303.403(c)]
- a. The notice must be
 - (i) written in language understandable to the general public; and
 - (ii) provided in the native language of the parents, unless it is clearly not feasible to do so.
 - b. If the native language or other mode of communication of the parent is not a written language, the public agency or designated service provider shall take steps to ensure that
 - (i) the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
 - (ii) the parent understands the notice; and
 - (iii) there is written evidence that the requirements of this paragraph have been met.
 - c. The mode of communication shall be that normally used by the parent (such as sign language, Braille, or oral communication) if the parents are deaf or blind, or have no written language.

Federal Regulations 1997

34 C.F.R. 303.400 General responsibility of lead agency for procedural safeguards.

Each lead agency must—

- (a) Establish or adopt the procedural safeguards that meet the requirements of this subpart, including the provisions on confidentiality, parental consent and notice, surrogate parents, and dispute resolution; and
- (b) Ensure the effective implementation of the safeguards by each EIS provider in the State that is involved in the provision of early intervention services under this part. (Authority: 20 U.S.C. 1439(a))

34 C.F.R. 303.403 Prior notice; native language.

(a) General. Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) Content of notice. The notice must be in sufficient detail to inform the 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 under

Secs. 303.401-303.460 of this part; and

(4) The State complaint procedures under Secs. 303.510-303.512, including a description of how to file a complaint and the timelines under those procedures.

(c) Native language. (1) The notice must be—

- (i) Written in language understandable to the general public; and
- (ii) Provided in the native language of the parents, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that—

(i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

- (ii) The parent understands the notice; and
- (iii) There is written evidence that the requirements of this paragraph have been met.

(3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, braille, or oral communication).

(Authority: 20 U.S.C. 1439(a)(6) and (7)

[58 FR 40959, July 30, 1993, as amended at 64 FR 12536, Mar. 12, 1999]

B. Parent Consent [34 C.F.R. 303.404; K.A.R. 28-4-552]

1. Written parental consent shall be obtained before
 - a. **screening procedures to determine (1) whether a child is suspected of having a disability; or (2) a child's eligibility under Part C;**
 - b. conducting the initial evaluation and assessment of a child;
 - c. initiating the provision of early intervention services;
 - d. public or private insurance is used; and
 - e. exchange of personally identifiable information among agencies.
2. If consent is not given, the public agency shall make reasonable efforts to ensure that the parent
 - a. is fully aware of the nature of the evaluation and assessment or the services that would be available; and
 - b. understands that the child will not be able to receive the evaluation, assessment, or services unless consent is given;
 - c. fully understands the contents of the IFSP.

If the parents do not consent to a particular early intervention service or withdraw consent after first providing it, the service may not be provided. The early intervention services to which consent is obtained must be provided.

3. If the parent does not give consent
 - a. the lead agency may, but is not required to, use due process hearing procedures to challenge the parent's refusal to consent to an evaluation and assessment of the child for early intervention services;
 - b. the lead agency may not use the due process procedures to challenge the parent's refusal to consent to the provision of an early intervention service or the use of insurance.
4. The parents of an infant or toddler with a disability
 - a. determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention service; and
 - b. may decline a service after first accepting it, without jeopardizing other early intervention services.
5. To determine who can provide consent as a parent, see I. A. Parent Means in this section.

If parental consent for evaluation, assessment, or initiation of services is not given, and the situation warrants, the local education agency (LEA) may initiate a complaint of neglect with the Kansas Social and Rehabilitation Services (SRS).

Federal Statute 2004**20 U.S.C. 1436. INDIVIDUALIZED FAMILY SERVICE PLAN.**

(e) PARENTAL CONSENT.—The contents of the individualized service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.

Federal Regulations 1997**34 C.F.R. 303.404 Parent consent.**

- (a) Written parental consent must be obtained before—
- (1) Conducting the initial evaluation and assessment of a child under Sec. 303.322; and
 - (2) Initiating the provision of early intervention services (see Sec. 303.342(e)).
- (b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent—
- (1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and
 - (2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

(Authority: 20 U.S.C. 1439)

Note 1: In addition to the consent requirements in this section, other consent requirements are included in (1) Sec. 303.460(a), regarding the exchange of personally identifiable information among agencies, and (2) the confidentiality provisions in the regulations under part B of the Act (34 CFR 300.571) and 34 CFR part 99 (Family Educational Rights and Privacy), both of which apply to this part.

Note 2: Under Sec. 300.504(b) of the part B regulations, a public agency may initiate procedures to challenge a parent's refusal to consent to the initial evaluation of the parent's child and, if successful, obtain the evaluation. This provision applies to eligible children under this part, since the part B evaluation requirement applies to all children with disabilities in a State, including infants and toddlers.

34 C.F.R. 303.405 Parent right to decline service.

The parents of a child eligible under this part may determine whether they, their child, or other family members will accept or decline any early intervention service under this part in accordance with State law, and may decline such a service after first accepting it, without jeopardizing other early intervention services under this part. (Authority: 20 U.S.C. 1439(a)(3))

State Regulations 1997**K.A.R. 28-4-552. Screening activities.**

- (e) Written parental consent shall be required before screening.

III. Child Advocate [34 C.F.R. 303.406]

KDHE and SRS have developed the Child Advocate Program to meet the need of infants and toddlers whose parents are unknown or unavailable. KDHE contracts with Families Together, Inc., the Kansas Parent Training and Information Center, to ensure that all children have a child advocate to represent them in critical decisions involving Part C early intervention services.

- A. Participating agencies, with the assistance of Families Together, Inc., if needed, must ascertain the legal relationship between the adult caregiver and the child prior to screening, evaluation, and assessment.
- B. Child advocates will be assigned to the child by Families Together, Inc., in conjunction with participating agencies if
 1. no parents can be identified;
 2. the public agency, after reasonable efforts, cannot locate a parent; or
 3. the child is a ward of the state under the laws of Kansas and the parental rights have been severed.

- C. The method used for assigning a child advocate is as follows:
1. SRS case workers, Infant-Toddler Services/tiny-k networks, contractor staff, and others must inform Families Together, Inc., upon determining that a child needs a child advocate;
 2. Families Together, Inc., under the authority of KDHE, appoints an appropriate child advocate;
 3. Families Together, Inc. notifies the child advocate, the local network Part C coordinator, the SRS case manager and KDHE of the appointment
- D. Criteria for selecting child advocates are as follows:
1. The child advocate must have completed an at-home training to become a child advocate.
 2. Families Together, Inc., must ensure that a person selected as a child advocate
 - a. is not an employee of the lead agency or any other public agency or early intervention services provider that provides early intervention services or other services to the child or any family member of the child;
 - b. has no personal or professional interest that conflicts with the interests of the child whom he or she represents; and
 - c. has knowledge and skills that ensure adequate representation of the child.
 3. A resource parent (foster parent) may become an appointed child advocate if they complete the training and there are no other conflicts of interests.
 4. A person assigned as a child advocate is not an employee of the agency solely because he or she is paid by the agency to serve as a child advocate.
- E. Child advocate responsibilities.
1. The child advocate has the same rights as a parent for all purposes under the Kansas Infant-Toddler Services/tiny-k services. A child advocate may represent a child in all matters related to
 - a. the evaluation and assessment of the child;
 - b. development and implementation of the child's IFSP, including annual evaluations and periodic reviews;
 - c. the ongoing provision of early intervention services to the child; and
 - d. any other rights established under this part.
 2. A child advocate should sign consent for screening, evaluation, provision of Part C services, and for the release of any Part C records. Most often the resource parent (foster parent) is the child advocate and should sign Part C paperwork as the child advocate.

Child advocates do not sign for medical or therapeutic treatment or anything else they could be held liable for, such as enrollment into a preschool program, daycare contracts, permission forms for field trips, etc. Here again, the resource parent may be the child advocate, but in these situations should sign as the resource or foster parent rather than the child advocate.

For additional information, contact the child advocate coordinator at Families Together, Inc., in the Topeka Center at 785.233.4777 or 800.264.6343 (for Kansas parents and advocates) or by e-mail at topeka@familiesaltogetherinc.org

Federal Regulations 1997

34 C.F.R. 303.406 Surrogate parents.

- (a) General. Each lead agency shall ensure that the rights of children eligible under this part are protected if—
 - (1) No parent (as defined in Sec. 303.18) can be identified;
 - (2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or
 - (3) The child is a ward of the State under the laws of that State.
- (b) Duty of lead agency and other public agencies. The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include a method for—
 - (1) Determining whether a child needs a surrogate parent; and
 - (2) Assigning a surrogate parent to the child.
- (c) Criteria for selecting surrogates. (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.
 - (2) Public agencies shall ensure that a person selected as a surrogate parent—
 - (i) Has no interest that conflicts with the interests of the child he or she represents; and
 - (ii) Has knowledge and skills that ensure adequate representation of the child.
- (d) Non-employee requirement; compensation. (1) A person assigned as a surrogate parent may not be—
 - (i) An employee of any State agency; or
 - (ii) A person or an employee of a person providing early intervention services to the child or to any family member of the child.
- (2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.
- (e) Responsibilities. A surrogate parent may represent a child in all matters related to—
 - (1) The evaluation and assessment of the child;
 - (2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;
 - (3) The ongoing provision of early intervention services to the child; and
 - (4) Any other rights established under this part.

(Authority: 20 U.S.C. 1439(a)(5))

[58 FR 40959, July 30, 1993, as amended at 63 FR 18296, Apr. 14, 1998]

State Regulations 1997

28-4-568. Surrogate parents.

- (a) Participating agencies with the assistance of the Kansas department of health and environment, if needed, shall ascertain the legal relationship between the adult caregiver and the child prior to evaluation and assessment. In Kansas, surrogate parents shall be known as child advocates.
- (b) The Kansas department of health and environment, in conjunction with participating agencies, shall assign child advocates to the child if:
 - (1) no parents can be identified;
 - (2) the public agency, after reasonable efforts, cannot discover the whereabouts of the parents; or
 - (3) the child is a ward of the state under the laws of Kansas and parental rights have been severed.
- (c) The method used for assigning a child advocate shall be as follows.
 - (1) Local agencies shall inform the Kansas department of health and environment upon determining that a child needs a child advocate.
 - (2) The Kansas department of health and environment shall assist the local agency in locating an appropriate child advocate or the child advocate shall be assigned under the authority of the Kansas department of health and environment.
- (d) The child advocate shall be selected from a list maintained by the Kansas department of health and environment of individuals who have completed training in advocacy for individuals or have demonstrated knowledge of the power, duties, and Kansas functions necessary to provide adequate representation of the child.
- (e) The participating agency shall ensure that a person selected as a surrogate parent:
 - (1) has no interest that conflicts with the interests of the child whom he or she represents; and
 - (2) has knowledge and skills that ensure representation of the child.
- (f) A person assigned as a child advocate shall not:
 - (1) be an employee of any agency involved in the provision of early intervention or other services to the child; or
 - (2) be an employee solely because he or she is paid by a public agency to serve as a child advocate.
- (g) A child advocate shall represent the child in all matters related to:

- (1) the evaluation and assessment of the child;
- (2) development and implementation of the child's IFSP, including annual evaluations and periodic reviews;
- (3) the ongoing provision of early intervention services to the child; and
- (4) any other rights established under this part. (Authorized by and implementing K.S.A. 1993 Supp. 75-5649; effective Jan. 30, 1995.)

IV. Resolution of Complaints (Mediation and Due Process)

Timely resolution of complaints must be accomplished by the use of mediation, state complaint procedures, or a due process hearing. A parent or an agency providing service must notify KDHE of a complaint received by a local lead agency leading to mediation, due process hearing, or both. See Section XX for State Complaint Procedures.

A complaint may be filed on any issue in dispute related to identification, evaluation, assessment, eligibility, process of developing the IFSP, placement of the child, and appropriateness of early intervention services provided.

A. Mediation [34 C.F.R. 303.419; K.A.R. 28-4-569]

1. KDHE must ensure that parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, are allowed to resolve disputes through a mediation process.
2. Requirements of Mediation
 - a. Mediation must be offered to parents as an option, but must not delay or extend the 30-calendar-day due process timeline.
 - b. Mediation proceedings must be completed or at impasse within seven calendar days of the local lead agency's receipt of the complaint. If an impasse has been reached or the time has elapsed, the complaint must be forwarded to KDHE within eight calendar days from the time KDHE was initially notified of the complaint.
 - c. Mediation must be requested by the parent or the agency and both parties must agree prior to entering into the process.
 - d. The state must bear the cost of the mediation process, including the costs of meetings as part of the process.
 - e. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
3. Selection of Mediators
 - a. KDHE must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations related to the provision of early intervention services.
 - b. KDHE must select mediators on a random, rotational, or otherwise impartial basis.
4. The Mediator Appointed by KDHE Must
 - a. have knowledge about the provisions of Part C of IDEA, and the needs of, and services available for, eligible children and their families;
 - b. have training in the mediation process;

- c. not be an employee of any agency or program involved in the direct provision of early intervention services or care of the child;
- d. not have a personal or professional interest that would conflict with his or her objectivity in implementing this process; and
- e. be selected by mutual agreement of the parents and local agency.

5. Duties of the Mediator Include

- a. listening to presentations of both parties to find out facts and isolate issues.
- b. assisting in the development of creative alternatives to resolve the complaint.
- c. facilitating negotiation and decision-making.
- d. providing, if resolution occurs, a mediation agreement that includes a written record of the proceedings, including the decision or solution, to the participants and to KDHE.
- e. forwarding, if no resolution within time limits or if an impasse occurs, the complaint to KDHE within one day, by telephone, followed by written documentation of the complaint and mediation activities within two working days.

6. Mediation Agreement

- a. An agreement reached by the parties to the dispute in the mediation process must be set forth in a written legally binding mediation agreement that
 - (i) states that all discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings; and
 - (ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency.
- b. A written, signed mediation agreement, as specified, is enforceable in any state court of competent jurisdiction or in a district court of the United States.
- c. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court of a state receiving Part C funds.
- d. Parties are required to sign a confidentiality pledge prior to commencement of the process.

7. Any Parents Involved in Mediation Has the Right to

- a. present their complaint and other relevant information and facts.
- b. hear the relevant and factual information of the other participants.
- c. present desired outcome of complaint and alternative ways to achieve the solution.
- d. explore with other parties possible solutions.
- e. obtain a record of the proceedings, including the solution.
- f. have the mediation proceedings conducted in their native language at a convenient time and place.

Federal Regulations 1997

34 C.F.R.303.419 Mediation.

(a) General. Each State shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in Sec. 303.403(a) to resolve the disputes through a mediation process which, at a minimum, must be available whenever a hearing is requested under Sec. 303.420. The lead agency may either use the mediation system established under Part B of the Act or establish its own system.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process—

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a due process hearing under Sec. 303.420, or to deny any other rights afforded under Part C of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (c) of this section.

(4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(Authority: 20 U.S.C. 1415(e) and 1439(a)(8))

State Regulations 1997

28-4-569. Resolution of complaints.

(a) For complaints not resolved informally at the local level, resolution shall be accomplished by the use of mediation, a due process hearing, or both. A parent or an agency providing service shall register with the Kansas department of health and environment a complaint leading to mediation, a due process hearing, or both.

(b) The local lead agency shall, through agreements with local service providers, assure that procedural safeguards are followed and enforced.

(c) The mediation process shall meet the following requirements:

(1) be offered to parents as an option but shall not delay or extend the 30-day due process procedure;

(2) be requested by the parents or the agency and have the agreement of both parties before entering into the process; and

(3) be completed or at impasse within seven calendar days of the local interagency coordinating council's receipt of the complaint.

(d) If at impasse or the time has elapsed, the complaint shall be forwarded to the Kansas department of health and environment within eight days from the time the complaint was registered with the Kansas department of health and environment.

(e) Mediators appointed by the Kansas department of health and environment shall meet the following requirements:

(1) have knowledge about the provisions of infant-toddler part of IDEA and the needs of, and services available for, eligible children and their families;

(2) have training in the mediation process;

(3) shall not be an employee of any agency or program involved in the direct provision of early intervention services or care of the child, and shall not have a personal or professional interest that would conflict with his or her objectivity in implementing the process;

(4) be selected by mutual agreement of the parents and the local agency; and

(5) perform the following duties:

(A) listen to presentations of both parties to find out facts and isolate issues;

(B) assist in the development of creative alternatives to resolve the complaint;

(C) facilitate negotiation and decision making;

(D) provide, if resolution occurs, a written record of the proceedings, including the decision or solution to the participant and the Kansas department of health and environment; and

(E) forward, if no resolution within the time limit or impasse occurs, the complaint to the Kansas department of health and environment within one day by telephone, followed within two working days by written documentation of the complaint and mediation activities.

(f) Parents' rights in mediation shall consist of the following:

- (1) presenting their complaint and other relevant information and facts;
 - (2) hearing the relevant and factual information of the other participants;
 - (3) presenting their desired outcome of the complaint and alternative ways to achieve the solution;
 - (4) exploring with other parties other possible solutions; and
 - (5) having the mediation proceedings conducted in their native language at a convenient time and place.
- (Authorized by and implementing K.S.A. 1996 Supp. 75-5649; effective Jan. 30, 1995; amended Aug. 15, 1997.)

B. Due Process Hearing [34 C.F.R. 303.420]

1. The due process hearing for complaint resolution is the responsibility of the KDHE. KDHE must:

- a. inform the parents of the procedures for filing a complaint and of any free or low-cost legal and other relevant services available upon request of the parent or if the action was initiated by the local agency providing services;
- b. appoint a due process hearing officer within one working day of notification of mediation impasse or time limitation not met or initial parent request to move directly into a due process hearing; and
- c. complete mediation, if applicable, and the due process procedures within 30 calendar days of the receipt of the due process complaint.

2. Appointment of an Impartial Due Process Hearing Officer [34 C.F.R. 303.421(a)]

a. Qualifications and duties.

An impartial due process hearing officer shall be appointed by KDHE to implement the complaint resolution process. The person must

- (i) have knowledge about the provisions of this part, due process hearings, and the needs of, and services available for, eligible children and their families; and
- (ii) perform the following duties:
 - listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint; and
 - provide a record of the proceedings, including a written decision to the participant and to KDHE.

3. Parent Rights in Due Process Hearing Proceedings (34 C.F.R. 303.422(b))

Any parent involved in a due process hearing has the right to

- a. be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for eligible children;
- b. present evidence, confront, cross-examine, and compel the attendance of witnesses;
- c. prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the hearing;
- d. obtain a written or electronic verbatim transcription of the hearing; and
- e. obtain written findings of fact and decisions.

4. Convenience of Hearings and Timelines [34 C.F.R. 303.423]
 - a. Any due process hearing conducted for implementing the complaint resolution process shall be carried out at a time and place that is reasonably convenient to the parents.
 - b. The impartial due process hearing shall be completed and a written decision mailed to each of the parties, no later than 30 calendar days after the receipt of the parent's complaint.

5. Civil Action [34 C.F.R. 303.424]

Any party aggrieved by the findings and decision regarding a due process complaint has the right to bring a civil action in state or federal court under Section 639(a)(1) of the Act.

6. Status of a Child During the Pendency of a Due Process Complaint [34 C.F.R. 303.425]
 - a. The child shall continue to receive the appropriate early intervention services currently being provided during the pendency of any proceeding involving a due process complaint, unless the public agency and parents of a child agree otherwise.
 - b. The child shall receive the services that are not in dispute if the due process complaint involves an application for initial services.
 - c. Once a child turns 3 and has been determined ineligible for services under Part B, the provisions of this section do not apply, and the lead agency is not required to provide Part C services to the child during the pendency of any due process complaint proceeding challenging the determination of ineligibility for Part B.

Federal Regulations 1997

34 C.F.R.303.422 Parent rights in administrative proceedings.

(a) General. Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph

(b) of this section in any administrative proceedings carried out under Sec. 303.420.

(b) Rights. Any parent involved in an administrative proceeding has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;

(4) Obtain a written or electronic verbatim transcription of the proceeding; and

(5) Obtain written findings of fact and decisions.

(Approved by the Office of Management and Budget under control number 1820-0550)(Authority: 20 U.S.C. 1439)

34 C.F.R. 303.423 Convenience of proceedings; timelines.

(a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents.

(b) Each lead agency shall ensure that, not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties. (Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1439(a)(1))

Note: Under part B of the Act, States are allowed 45 days to conduct an impartial due process hearing (i.e., within 45 days after the receipt of a request for a hearing, a decision is reached and a copy of the decision is mailed to each of the parties). (See 34 CFR 300.512.) Thus, if a State, in meeting the requirements of Sec. 303.420, elects to adopt the due process procedures under part B, that State would also have 45 days for hearings. However, any State in that situation is encouraged (but not required) to accelerate the timeline for the due process hearing for children who are eligible under this part—from 45 days to the 30-day timeline in this section. Because the needs of children in the

birth-through-two-age range change so rapidly, quick resolution of complaints is important.

34 C.F.R. 303.424 Civil action.

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act.

(Approved by the Office of Management and Budget under control number 1820-0550)(Authority: 20 U.S.C. 1439(a)(1))

34 C.F.R. 303.425 Status of a child during proceedings.

(a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

(Approved by the Office of Management and Budget under control number 1820-0550) (Authority: 20 U.S.C. 1439(a)(7))

V. Confidentiality and Access Rights

A. Confidentiality Procedures

1. The parent of a child referred to the Kansas Infant-Toddler Services/tiny-k is afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies.
2. Providers of early intervention services must comply with the Kansas Infant-Toddler Services/tiny-k confidentiality procedures, which contain confidentiality provisions that are consistent with, but broader than, those under the Family Educational Rights and Privacy Act (FERPA).
3. The confidentiality procedures described in this section apply to the personally identifiable information of a child and the child's family that
 - a. is contained in early intervention records collected, used, or maintained under this part by the lead agency (KDHE) or an Infant-Toddler Services/tiny-k provider; and
 - b. applies from the point in time when the child is referred for early intervention services under this part until the later of when the lead agency or early intervention service provider is no longer required to maintain or maintains that information.
4. To enable the Kansas Infant-Toddler Services/tiny-k as well as LEAs under Part B, to identify all children potentially eligible for services under Part C and Part B of IDEA, the Infant-Toddler Services/tiny-k network must disclose to the LEA where the child resides the following limited information that would otherwise be determined to be personally identifiable information
 - a. a child's name
 - b. a child's date of birth
 - c. parent contact information (including parents' names, addresses, and telephone numbers). (34 C.F.R. 300.622(b)(1); OSEP Letter to Mary Elder, February 11, 2004)

B. Notice to Parents [34 C.F.R. 300.612]

1. KDHE must give notice that is adequate to fully inform parents about the confidentiality requirements of the Kansas Infant-Toddler Services/tiny-k. This notice shall be provided before any Child Find activity. **The notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the community.** The notice shall include:
 - a. A description of the extent to which the notice is given in the native languages of the various population groups in the community;
 - b. A description of the children for whom personally identifiable information is maintained, the types of information sought, the methods the community intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
 - c. A summary of the policies and procedures that participating agencies shall follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
 - d. A description of all of the rights of parents and children regarding this information, including the rights under Part C confidentiality provisions in Sections 438 of General Education Provisions Act (GEPA) and Part 99 of Family Education Rights and Privacy Act of 2007 (FERPA) and implementing regulations.

C. Access Rights [34 C.F.R. 300.613]

1. Each participating agency must permit parents to inspect and review any of the child's records that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IFSP, before the provision of early intervention services, or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.
2. The right to inspect and review education records under this section includes:
 - a. a response from the participating agency to reasonable requests for explanations and interpretations of the records;
 - b. a request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 - c. the right to have a representative of the parent inspect and review the records.
3. An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

D. Record of Access [34 C.F.R. 300.614]

Each participating agency must post a list of authorized personnel who have access to records. The agency must keep a record of parties obtaining access to records collected, maintained, or used as part of the Infant-Toddler Services/tiny-k network

(except access by parents and authorized employees of the participating agency), including

- the name of the party;
- the date access was given; and
- the purpose for which the party is authorized to use the records.

E. Records on More Than One Child [34 C.F.R. 300.615]

If any record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

F. List of Types and Locations of Information [34 C.F.R. 300.616]

Each participating agency shall provide parents, on request, a list of the types and locations of records collected, maintained, or used by the agency.

G. Fees [34 C.F.R. 300.617]

1. Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review the records.
2. A participating agency shall not charge a fee to search for or to retrieve information under this part.

H. Amendment of Records at Parent Request [34 C.F.R. 300.618]

1. A parent who believes that information in records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child, may request the participating agency which maintains the information to amend the information.
2. The participating agency must decide whether to amend the information in accordance with the request within a reasonable time (30 calendar days) after receipt of the request.
3. The agency must inform the parents of the agency's refusal to amend the information in accordance with the request. The agency must advise the parents of the right to a hearing under this part.

I. Opportunity for a Hearing [34 C.F.R. 300.619]

The participating agency must, on request, provide an opportunity for a due process hearing (according to Part C requirements) to challenge information in records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

J. Result of Hearing [34 C.F.R. 300.620]

1. If, as a result of the due process hearing, the participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other

rights of the child, it must amend the information accordingly and so inform the parent in writing.

2. If, as a result of the due process hearing, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy of other rights of the child, it must inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
3. Any explanation placed in the records of the child under this section shall:
 - a. be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and
 - b. be disclosed to the party if the record of the child or the contested portion is disclosed by the agency to any party.

K. Hearing Procedures [34 C.F.R. 300.621]

A due process hearing regarding record content must be conducted according to the procedures of FERPA, Section 99.22.

L. Consent [34 C.F.R. 300.622]

1. Parental consent must be obtained before personally identifiable information is:
 - a. disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting or using the information under this part; or
 - b. used for any purpose other than meeting a requirement under this part.
2. A participating agency or an institution subject to FERPA, Section 99.31, or IDEA must not release information from education records to participating agencies without parental consent unless authorized to do so.
3. Parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.
4. According to FERPA, the request for release of information must
 - specify the records that may be disclosed;
 - state the purpose of the disclosure; and
 - identify the party or class of parties to whom the disclosure may be made.

Further,

- all releases are revocable at any time;
 - a release is valid for 12 months (unless otherwise specified); and
 - parents may request a copy of any records disclosed.
5. If parents refuse to provide consent under this section, parents must be given information regarding their due process rights and an opportunity to implement a due process hearing.

6. When parents refuse consent, the lead agency may implement a due process hearing in order to obtain the records.

M. Safeguards [34 C.F.R. 300.623]

1. Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
2. One official at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.
3. All persons collecting or using personally identifiable information shall receive training or instruction regarding the State's policies and procedures under this part and FERPA.
4. Each participating agency 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.

N. Destruction of Information [34 C.F.R. 300.624]

1. The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide early intervention services to the child.
2. The information must be destroyed at the request of the parents. However, a permanent record of a child's name, address, birth date, parent contact information (including address and phone numbers), names of services coordinator(s) and early intervention services provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation.

O. Enforcement [34 C.F.R. 300.626]

KDHE implements a monitoring system that includes sanctions to ensure that Kansas Infant-Toddler Services/tiny-k policies and procedures are followed and that the requirements of the IDEA 2004 and the regulations for Part C are met.

Federal Regulation—Part B 2006

Confidentiality of Information

34 C.F.R. 300.612. Notice to parents

- (a) The SEA shall give notice that is adequate to fully inform parents about the requirements of Sec. 300.123, including—
 - (1) A description of the extent that the notice is given in the native languages of the various population groups in the State;
 - (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
 - (3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
 - (4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in 34 C.F.R. part 99.
- (b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents

throughout the State of the activity.

34 C.F.R. 300.613. Access rights

- (a) Each participating agency shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to Secs. 300.507 and 300.521-300.528, and in no case more than 45 days after the request has been made.
- (b) The right to inspect and review education records under this section includes—
 - (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
 - (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
 - (3) The right to have a representative of the parent inspect and review the records.
- (c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

34 C.F.R. 300.614 Record of access.

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

34 C.F.R. 300.615 Records on more than one child.

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

34 C.F.R. 300.616 List of types and locations of information.

Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

34 C.F.R. 300.617 Fees.

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

34 C.F.R. 300.618 Amendment of records at parent's request.

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

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

(c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under § 300.619. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

34 C.F.R. 300.619 Opportunity for a hearing.

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

34 C.F.R. 300.620 Result of hearing.

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must 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 otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

34 C.F.R. 300.621 Hearing procedures.

A hearing held under § 300.619 must be conducted according to the procedures in 34 CFR 99.22.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

34 C.F.R. 300.622 Consent.

(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.

(b)(1) Except as provided in paragraphs(b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

34 C.F.R. 300.623 Safeguards.

(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under § 300.123 and 34 CFR part 99.

(d) Each participating agency must 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.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

34 C.F.R. 300.624 Destruction of information.

(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

34 C.F.R. 300.626 Enforcement.

The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with §§ 300.611 through 300.625 are followed and that the requirements of the Act and the regulations in this part are met.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

OSEP Letter to Mary Elder, February 11, 2004.

Under the IDEA, in States where the SEA, through an interagency agreement or other mechanism, has included the lead agency's participation in the SEA's child find activities, the SEA, with the lead agency, can establish procedures that allow the lead agency to refer a child to the SEA without prior parent consent in order to meet the SEA's child find responsibilities under 34 CFR §300.125. The specific information that can be included in the referral without prior parental consent by the lead agency for these limited child find purposes are the child's name, date of birth, and sufficient parent contact information (as determined by the SEA) to the SEA and/or LEA so that the SEA and LEA can meet their respective child find responsibilities.

State Complaint and Due Process Hearing Procedures

State Complaint 303.510	Due Process Hearing 303.420-424
60-day timeline from the date of receipt of the complaint to complete investigation and issue of a written decision addressing each allegation.	30-day timeline from date of receipt of the due process complaint to complete hearing and issue of a written decision.
An organization or individual may file a complaint on any issue in dispute related to identification, evaluation, assessment, eligibility, process of developing the IFSP, placement of the child, and the appropriateness of early intervention services.	A complaint may be filed on any issue in dispute related to identification, evaluation, assessment, eligibility, process of developing the IFSP, placement of the child, and the appropriateness of early intervention services.
Voluntarily participate in mediation within the 60-day timeline unless an extension of time is agreed upon.	Voluntarily participate in mediation within the 30-day timeline for completion.
KDHE must resolve any complaint received.	KDHE appoints an impartial due process hearing officer.
KDHE must carry out an independent on-site investigation.	Due process hearings must be conducted at time and place reasonably convenient to parents.
<p>KDHE must:</p> <ul style="list-style-type: none"> • give complainant the opportunity to submit additional information; • allow lead agency, public agency or Early Intervention Services (EIS) provider opportunity to respond to complaint; • determine if violation occurred 	<p>Parents have the right to:</p> <ul style="list-style-type: none"> • legal council, present evidence, and cross-examine witnesses; • prohibit evidence not disclosed five days prior to hearing; • receive written transcript and written finding of facts.
KDHE will issue a written decision within 60 days addressing each allocation in the complaint and include effective procedures for implementing the final decision.	Due process hearing officer will mail a written decision to each party no later than 30 days from receipt of complaint.
<ul style="list-style-type: none"> • KDHE must set aside any part of the complaint that is part of a due process hearing. • Any issue that has been decided as part of a due process hearing involving the same parties is binding on that issue. • KDHE must resolve any due process hearing decision the local lead agency or EIS provider has failed to implement. 	<ul style="list-style-type: none"> • The child shall continue to receive early intervention services not in dispute, unless otherwise agreed upon. • Once the child turns 3, Part C is not required to provide EI services during a due process hearing challenging eligibility for Part B.

Provision of Prior Written Notice, Request for Consent, and Procedural Safeguards

Procedure	Prior Written Notice 303.403	Request for Consent 303.404; 28-4-552(e)	Procedural Safeguards 303.403
Conduct screening	X	X	X
Not suspected of developmental delay (DD) after screening (not conduct an evaluation)	X		X
Conduct evaluation/child assm't/family assm't	X	X	X
Refuse to conduct initial evaluation or reevaluation to determine eligibility	X		X
Not eligible for EI services	X		X
Initiate EI services	X	X	X
Conduct reevaluation	X	X	X
Change EI services/exit	X		X
Public or private insurance		X	
Exchange of personal information among agencies		X	

Revised 2-09

Child Advocates

Introduction

Family involvement in infant-toddler services is a cornerstone of Part C. A partnership between the family and infant-toddler providers is necessary to continually plan, implement services and monitor progress through the Individualized Family Service Plan (IFSP). However, the law recognizes that not all children have available parents. These children need someone to represent them when Part C decisions are made. In these cases, the Kansas Department of Health and Environment appoints a Child Advocate to make decisions about Part C services. Child Advocates are trained volunteers.

KDHE and the Department of Social and Rehabilitation Services (SRS) have developed the Child Advocate program to meet the need of infants and toddlers whose parents are unknown or unavailable. KDHE contracts with Families Together, Inc., the Kansas Parent Training and Information Center to:

- field requests from SRS, contractor staff, Tiny-K networks, and others for the appointment of a child advocate;
- provide training to interested persons to become a child advocate;
- match the advocate to the individual child;
- disseminate an appointment letter to the child advocate and copies to the Part C Coordinator, the child's case manager and KDHE;
- maintain all records of appointments and cancellations;
- provide follow-up with the child advocate;
- perform consultation and problem-solving with the child advocate, infant-toddler providers, case managers and others;
- track the child's whereabouts and status;
- ensure that no advocate with a conflict of interest is appointed; and,
- ensure that the child has an educational-decision maker at the age of three.

Who Needs a Child Advocate?

Infants and toddlers age birth to three who are in SRS custody; and whose parents are unknown or unavailable; and, who are in need of screening or evaluation to determine eligibility for Part C services or who are currently receiving Part C services.

Families Together, Inc. 2009

Definition of Parent

Part C staff must identify the appropriate person(s) to make decisions on behalf of the child. Resource (foster) parents do not have authority to make Part C decisions for a foster child in their care unless they have been appointed as the Child Advocate. The state or its contractor may not act as the parent in infant-toddler processes. The definitions of “parent”, “person acting as a parent” and child advocate” are as follows: “Parent” means a biological parent, an adoptive parent, a person acting as a parent, a legal guardian, or a child advocate.

“Person acting as a parent” means a person such as a grandparent or a stepparent with whom the child lives or a person other than a parent who is legally responsible for the welfare of a child, but not the state if the child is a ward of the state

“Child advocate” means a person appointed by the Kansas Department of Health and Environment in accordance with law. The child advocate shall not be: (1) an employee of an agency which is required by law to provide Part C services for the child; (2) an employee of the state department, or any agency which is directly involved in providing infant-toddler services for the child; or, (3) any person having a professional or personal interest which would conflict with the interest of the child.

Unavailable or Unknown Parent

Parents are unavailable if:

- the court has terminated the parent(s) rights;
- the parent(s) has relinquished his or her rights;
- the court has ordered no contact between parent(s) and the child;
- the parent(s) has been deemed incompetent by a court of law;
- the parent is deceased;
- the court has deemed the parent unavailable;
- the parent(s) whereabouts are unknown; or,
- the parent is unknown.

Appointing a Child Advocate

If the child is in the custody of SRS and the child is receiving or may be in need of Part C services, SRS or its contractors immediately informs Families Together and the Part C provider that the child is in need of a child advocate. Families Together, under the authority of KDHE, appoints a child advocate.

Families Together notifies the child advocate, the Part C coordinator, the child’s case manager, and KDHE of the appointment.

Training to Become a Child Advocate

KDHE and Families Together have developed an at-home training to become a child advocate. Upon receiving a referral for a child to have a child advocate, Families Together immediately contacts the resource parents of the child to see if they are

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interested in training to become the child advocate for the child in their home. If the resource parent agrees, a training packet is mailed. After reviewing the training material, the resource parent forwards an application back to Families Together, the appointment is made and interested parties are notified by mail.

Canceling the Appointment of a Child Advocate

Child Advocate appointments are canceled when:

- the child turns three years of age;
- the child's adoption finalizes;
- the child no longer needs infant-toddler services;
- the child does not qualify for services following a screen or an evaluation;
- the parent becomes available;
- the child is placed with a relative.

Children who move to a different resource home or to an adoptive placement may also have one child advocate appointment canceled and another advocate appointed. It is common practice for the resource or adoptive parent with whom the child lives to be appointed as the child advocate.

Question and Answers about Child Advocates

Does the resource parent always serve as the child advocate or can others serve in this role?

Because of the nature of service delivery and the focus of the family in Part C, it is preferable that the resource parent serve in this role. However, if the resource parent does not wish to, has a conflict of interest or for some other reason cannot, another person may fulfill this role. A child's case manager would be a second choice and a community volunteer the third choice.

Can a Part C provider contact Families Together if they think they have a child who needs a child advocate?

Families Together welcomes calls from any person who believes a child may be in need of a child advocate. Most often, the status of the parents will have to be verified through SRS or its contractor before an appointment can be made.

What should and shouldn't a child advocate sign?

A child advocate should sign consent for screening, evaluation, provision of Part C services, and for the release of any Part C records. Most often the resource parent is the child advocate, but should sign Part C paperwork as the "child advocate".

Child advocates do not sign for medical or therapeutic treatment or anything else they could be held liable for, such as enrollment into a preschool program, daycare contracts, permission forms for field trips, etc. Here again, the resource parent may be the child

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advocate, but in these situations should sign as the resource or foster parent rather than the child advocate.

When the child is getting ready to transition to Part B (education) services, who signs the school's paperwork?

The child advocate could sign for the referral to Part B and for the release of Part C records, but most often, an education advocate will have to sign for the Part B evaluation to take place. Sometimes this means the child will have two advocates— a child advocate and an education advocate. This may be two different people. If the child advocate is also a trained education advocate, it can be the same person.

How do I become an education advocate?

The lead agency for Infant-Toddler services in is the Kansas Department of Health and Environment. The lead agency for Education, or Part B, services is the Kansas State Department of Education. KSDE requires education advocates take a five hour course to become an education advocate. This training is offered and provided by Families Together several times throughout the year across Kansas. KSDE has contracted with Families Together to coordinate the education advocate program.

Who do I contact if I have more questions?

Please contact the child advocate coordinator at Families Together in the Topeka Center at 785.233.4777 or 800.264.6343 (for Kansas parents and advocates) or by e-mail at topeka@famielstogethertnc.org

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