



## NEW JERSEY EARLY INTERVENTION SYSTEM (NJEIS) FAMILY RIGHTS

The “NJEIS Family Rights” describes your child’s and family’s rights, as defined by Part C of the Individuals with Disabilities Education Act (IDEA). The “NJEIS Family Rights” uses language contained in [34 CFR 303-Part C Regulations](#).

The following describes and serves as notice on each of the specific procedural safeguards you are entitled to under the NJEIS.

### **THE RIGHT TO INFORMED PARENTAL CONSENT AND ABILITY TO DECLINE SERVICES (34 CFR 303.7, 303.25, 303.420).**

**Consent** means that you:

- Have been fully informed of all information relevant to the activity, for which consent is sought, in your Native (primary) language as defined in this section.
- Understand and agree in writing to the carrying out of the activity for which your consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and
- Understand that the granting of consent is voluntary on your part and may be revoked at any time.

If you revoke consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

Your written consent must be obtained before:

- All evaluations and assessments of your child are conducted;
- Early intervention services are provided to your child;
- Public benefits are used; and
- Disclosure of personally identifiable information consistent with consent requirements under confidentiality.

In granting consent to early intervention services, you are agreeing to satisfy the family cost participation provisions in the NJEIS, if applicable.

If you do not consent to evaluations, assessments, or early intervention services, the local service provider/practitioner participating in Part C shall make reasonable efforts to ensure that you:

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

NJEIS may not use the due process hearing procedures under Part C or Part B of the IDEA to challenge your refusal to provide any consent required.

In addition, as the parent of a child eligible under the NJEIS, you may determine whether you, your child or other family members will accept or decline any early intervention services under this system at any time in accordance with New Jersey law and federal regulations. Participation in the Part C early intervention system for infants and toddlers is voluntary for you and your family. You may:

- Accept all services agreed to on the Individualized Family Service Plan (IFSP);
- Decline all services agreed to on the IFSP;
- Accept one or some of the services agreed to on the IFSP and decline other service(s); or
- Decline a service after first accepting it without jeopardizing other early intervention services under NJEIS.

#### **Native Language**

- *Native language*, when used with respect to an individual who is limited English proficient or LEP (as that term is defined in section 602(18) of the Act), means:
  - The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided below; and
  - For evaluations and assessments conducted pursuant to §303.321(a)(5) and (a)(6), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.
- *Native language*, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

### **THE RIGHT TO PRIOR WRITTEN NOTICE AND PROCEDURAL SAFEGUARDS NOTICE (34 CFR 303.421)**

Prior written notice must be provided to you within 10 calendar days before a provider agency or service provider participating in NJEIS proposes or refuses to initiate or change the identification, evaluation, or placement of your child or the provision of early intervention services to your child and your family. Neither a practitioner providing early intervention services on an IFSP nor the practitioner’s provider agency shall revise services or eligibility without going through the IFSP team process. The notice must be sufficiently detailed to inform you about:

- The action that is being proposed or refused;
- The reasons for taking the action; and
- All procedural safeguards that are available under NJEIS including a description of mediation, how to file a state complaint and a due process complaint and any timelines under these procedures.

The notice must be:

- Written in language understandable to the general public and provided in your primary (native) language or mode of communication unless it is clearly not feasible to do so.
- If your primary (native) language, as defined above, or other mode of communication used by you, is not a written language, the provider agency, or service provider participating in the NJEIS shall take steps to ensure that:
  - The notice is translated orally or by other means to you in your primary language or other mode of communication;
  - You understand the notice; and
  - There is written evidence that these requirements have been met.

### **CONFIDENTIALITY AND OPPORTUNITY TO EXAMINE RECORDS (34 CFR 303.400, 303.401)**

In accordance with the confidentiality of information procedures outlined in this document, as a parent of an infant or toddler who has been referred to, or receives services under NJEIS, you:

- Are ensured of the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to Part C by participating agencies, including the DOH and NJEIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR Part 99; and
- Must be afforded the opportunity to inspect and review all early intervention records collected, maintained, or used under NJEIS including records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving your child, or any part of the child's early intervention record under NJEIS.

To meet state and federal data collection and reporting requirements, timely communication and coordination of services for your family, the NJEIS maintains a secure electronic database of your child and family's information including name, address, date of birth, telephone number, personal identification number, eligibility services, and service providers.

NJEIS must ensure that the parents of a child referred under Part C are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with Federal and New Jersey laws.

The NJEIS ensures the effective implementation of the safeguards by each participating agency and NJEIS providers in the statewide system that is involved in the provision of early intervention services; and make available to you, an initial copy of your child's early intervention record, at no cost to you.

The confidentiality procedures described apply to the personally identifiable information of a child and the child's family that:

- Is contained in early intervention records collected, used, or maintained under Part C by DOH and NJEIS providers; and
- Applies from the point in time when the child is referred for early intervention services under Part C until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable Federal and State laws.

### **Disclosure of Information Subject to Parental Opt-out**

Subject to 'Opt-Out of Disclosure' below, the NJEIS must disclose to the SEA and the LEA where the child resides, in accordance with the transition requirements, the following personally identifiable information under the IDEA:

- Child's name.
- Child's date of birth.
- Parent contact information (including parents' names, addresses, and telephone numbers).

The information described above is needed to enable the NJEIS, as well as LEAs and SEAs under Part B of the IDEA.

DOH requires NJEIS providers, prior to making the limited disclosure described above, to inform you of the intended disclosure and allow you ten calendar days to object to the disclosure in writing. If you provide written objection during the ten day time period, the DOH and NJEIS providers are not permitted to disclose the information above.

### **DEFINITIONS (34 CFR 303.403)**

- Destruction of records means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable.
- Early Intervention records means all records regarding a child that are required to be collected, maintained, or used under Part C of the IDEA and its implementing regulations.
- Personally Identifiable is information that includes but is not limited to: (1) the name of your child, your name, or the name of other family members; (2) the address of your child; (3) a personal identifier, such as your child's or your social security number or your child's number or a biometric record; (4) other indirect identifiers, such as the child's date of birth, place of birth, and mother's maiden name; (5) other information that, alone or in combination, is linked or linkable to a specific child that would allow a reasonable person in the early intervention system who does not have personal knowledge of the relevant circumstance, to identify the child with reasonable certainty; or (6) information requested by a person who the NJEIS reasonably believes knows the identity of the child to whom the EI record relates.
- "Participating agency" means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the IDEA and its implementing regulations with respect to a particular child. A participating agency includes the DOH and NJEIS providers and any individual or entity that provides any Part C services (including service coordination, evaluations and assessments, and other Part C services), but does not include primary referral sources, or public agencies (such as the State Medicaid or CHIP program) or private entities that act solely as funding sources for Part C services.

- “Disclosure” means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.

**NOTICE TO PARENTS (34 CFR 303.404)**

The NJEIS must give notice when your child is referred under Part C of IDEA that is adequate to fully inform you about the requirements in confidentiality including:

- A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods New Jersey intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- 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;
- A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions; and
- A description of the extent that the notice is provided in the native languages of the various population groups in New Jersey.

**ACCESS RIGHTS (34 CFR 303.405)**

Each participating agency must permit you to inspect and review any early intervention records relating to your child collected, maintained or used by the agency under Part C. The agency shall comply with your request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP or hearing relating to identification, evaluation, or placement or the provision of appropriate early intervention services to your child. Such records will be made available to you no later than ten (10) calendar days after the request has been made.

The right to inspect and review early intervention records includes:

- The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention record;
- The right to request that the participating agency provide copies of the early intervention 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
- The right to have someone who is representing you inspect and review the record with your written consent.

An agency may presume that you have the authority to inspect and review records relating to your child unless the agency has been provided documentation that you do not have the authority under applicable New Jersey law governing such matters as guardianship, separation, divorce, custody, and foster care.

**RECORD OF ACCESS (34 CFR 303.406)**

Each participating agency shall keep a record of parties obtaining access to early intervention records collected, maintained, or used under Part C of IDEA (except access by you and authorized employees and representatives 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 early intervention records.

**RECORDS ON MORE THAN ONE CHILD (34 CFR 303.407)**

You have the right to inspect and review only the information relating to your child, or to be informed of that specific information pertaining to your child if any record includes information on more than one child.

**LISTS OF TYPES AND LOCATIONS OF INFORMATION (34 CFR 303.408)**

Each participating agency shall provide you, upon request, with a list of the types and locations of early intervention records collected, maintained, or used by the agency.

**FEEES FOR RECORDS (34 CFR 303.409)**

Each participating agency may charge a fee for copies of records if the fee charged for the copies does not effectively prevent you from exercising your right to inspect and review your records. Except a participating agency must provide at no cost to you, a copy of each evaluation, assessment of your child, family assessment, and IFSP as soon as possible after each IFSP meeting; and a participating agency may not charge a fee to search or to retrieve information under Part C of IDEA.

**AMENDMENT OF RECORDS AT A PARENT’S REQUEST (34 CFR 303.410)**

If you believe that information in early intervention records collected, maintained, or used under Part C is inaccurate, misleading, or violates the privacy or other rights of you or your child, you may request the participating agency that maintains the information to amend the information.

- The participating agency must decide whether to amend the information in accordance with the request within a reasonable period of time after it receives the request.
- If the participating agency refuses to amend the information as you request, you will be informed in writing of the refusal and be advised of the right to a hearing.

**OPPORTUNITY FOR A HEARING (34 CFR 303.411)**

The DOH, on request, shall provide you an opportunity for a hearing to challenge information in your child’s early intervention records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child or you. You may request a due process hearing under the procedure in this document provided that such hearing procedures meet the requirements of the hearing procedures under the Family Education Rights & Privacy Act (FERPA) or you may request a hearing directly under FERPA regulations at 34 CFR 99.22.

## **RESULTS OF HEARING (34 CFR 303.412)**

If, as a result of the hearing, the DOH decides that the information is:

- Inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child or you, your records shall be amended accordingly and you will be notified in writing of the amendment; or
- Not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child or you, you will be informed of your right to place in your child's early intervention record, maintained on your child a statement commenting on the information and providing any reasons for disagreeing with the decision.

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

- Be maintained by the participating agency as part of the records of your child as long as the record or contested portion (that part of the record with which you disagree) is maintained by such agency; and
- If the early intervention records of your child or the contested portion are disclosed by such agency to any party, the explanation must also be disclosed to the party.

## **CONSENT PRIOR TO DISCLOSURE OR USE (34 CFR 303.414)**

Except as provided in this section, your prior parental consent must be obtained before personally identifiable information is:

- Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under Part C, subject to this section; or
- Used for any purpose other than meeting a requirement of Part C.

The NJEIS or other participating agencies may not disclose personally identifiable information, as defined in this document, to any party except participating agencies (including the DOH and NJEIS providers) that are part of the New Jersey Part C system without your consent unless authorized to do so under:

- Disclosure of information for transition; or
- One of the exceptions enumerated in 34 CFR 99.31 (where applicable to Part C), which are expressly adopted to apply to Part C through this reference. In applying the exceptions in 34 CFR 99.31 to Part C of IDEA, participating agencies must also comply with the pertinent conditions in 34 CFR 99.32, 99.33, 99.34, 99.35, 99.36, 99.38, and 99.39; in applying these provisions in 34 CFR Part 99 to Part C, the reference to:
  - 34 CFR 99.30 means §303.414(a);
  - "Education records" means early intervention records as defined in this document;
  - "Educational" means early intervention under Part C;
  - "Educational agency or institution" means the participating agency defined in this document;
  - "School officials and officials of another school or school system" means qualified personnel or service coordinators under Part C;
  - "State and local educational authorities" means the NJEIS; and
  - "Student" means child under Part C.

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

The early intervention agencies/practitioners assigned to your child and family who have access to your early intervention records include the following:

- Regional Early Intervention Collaborative (REIC) staff responsible for the system point of entry referral, data entry into an electronic NJEIS database, eligibility evaluation/assessment and, if eligible, transfer of your child and family's record.
- Service Coordination Units (SCUs)/service coordinator responsible for the coordination of your early intervention services.
- Early Intervention Program (EIP) provider agencies and practitioners responsible for the provision of your early intervention services.
- Department of Health (DOH), the lead agency responsible for the administration of the NJEIS.

If there is any information you would prefer not to be shared with the provider agency, please let your service coordinator know.

Your consent must be obtained before personally identifiable information is:

- Disclosed to parties, other than officials of participating agencies, unless the information is contained in early intervention records, and the disclosure is authorized without parental consent under 34 CFR Part 99; or
- Used for any purpose other than meeting a requirement under NJEIS.

## **SAFEGUARDS (34 CFR 303.415)**

Each participating agency in NJEIS must protect the confidentiality of personally identifiable information at collection, maintenance, use, storage, disclosure, and destruction stages. One official at each agency participating in NJEIS must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under confidentiality and FERPA, 34 CFR Part 99.

Each agency participating in NJEIS must maintain, for public inspection, a current listing of the names and positions of employees within the agency who have access to personally identifiable information.

## **DESTRUCTION OF INFORMATION (34 CFR 303.416)**

Each participating agency must inform you when personally identifiable information collected, maintained, or used under part C is no longer needed to provide services to your child under part C of the IDEA, the GEP provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR parts 76 and 80.

Subject to the above, the information must be destroyed at the request of the parents. However, a permanent record of a child's name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and EIS provider(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation.

#### **ENFORCEMENT (34 CFR 303.417)**

DOH has in effect the policies and procedures, including sanctions and the right to file a complaint under §§303.432 through 303.434, that New Jersey uses to ensure that its policies and procedures, consistent with §§303.401 through 303.417, are followed and that the requirements of IDEA and the Part C regulations are met.

#### **THE RIGHT TO FORMAL DISPUTE RESOLUTION**

The DOH has designated the state Early Intervention Procedural Safeguards Office, herein referred to as the Procedural Safeguards Office, to ensure the resolution of disputes within the Early Intervention System. Formal options for resolving disputes include mediation, impartial due process hearings and complaints.

All requests for complaint investigation, mediation, and/or impartial due process hearing, are to be filed with the Procedural Safeguards Office in writing consistent with these procedures. Assistance in completing a written request for formal dispute resolution is available to you at your request from your service coordinator, REIC, provider agency or the Procedural Safeguards Office.

No parties are entitled to legal fees from NJEIS under these formal dispute resolution procedures.

#### **Mediation (34 CFR 303.430 and 431)**

A statewide mediation system is available to you at any time to ensure that you may voluntarily access a non-adversarial process for the resolution of individual disputes regarding the NJEIS. Mediation is available for disputes under Part C including any matters arising prior to the filing of a due process hearing. Mediation is voluntary on the part of all parties. The Procedural Safeguards Office identifies individual mediators to provide early intervention mediation services. Mediators are required to undergo training as a condition of serving as mediators. The Procedural Safeguards Office shall maintain a list of qualified and impartial mediators who are trained in effective mediation techniques and are knowledgeable in laws and regulations related to the provision of early intervention services. An individual who serves as a mediator under NJEIS:

- May not be an employee of DOH or a provider agency that is involved in the provision of early intervention services or other services to the child; and
- Must not have a personal or professional interest that conflicts with the person's objectivity.

A person serving as a mediator is not an employee of the DOH or a provider agency solely because he or she is paid by DHHS to serve as a mediator. The Procedural Safeguards Office shall select mediators on a random, rotational, or other impartial basis.

Mediation cannot be used to deny or delay your right to an impartial due process hearing or any other rights afforded under Part C. You can request mediation alone or simultaneously with a request for an impartial due process hearing and may refuse or withdraw from the mediation process at any time. You may also file a request for mediation when filing an administrative complaint.

A request for mediation shall be in writing, signed and dated by you or, with your consent, your representative. If you wish to file a request for mediation, it is the responsibility of the service coordinator, REIC, provider agency, and/or the Procedural Safeguards Office to assist you, in your primary language and/or mode of communication unless it is clearly not feasible to do so, and to prepare the request in written form. If your primary mode of communication is sign language or Braille, the request can be made utilizing your primary mode of communication.

If any party other than you requests mediation, it may only be initiated with your consent. Once your written consent has been obtained to engage in mediation, evidence of that written consent shall be attached to the request for mediation. The REIC or service provider/agency's request that you agree to participate in mediation shall be made in writing.

The mediation process, including issuance of a written mediation agreement, shall be completed within 30 calendar days of the receipt of the request for mediation unless a request for mediation, an impartial due process hearing or complaint investigation was requested at the same time. In that case, the mediation must be completed within fifteen (15) calendar days to ensure adequate time for completion of the due process proceeding or complaint investigation.

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. The state must incur the cost of the mediation process.

If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution. The agreement must state that all discussions that occurred during the mediation process shall remain confidential and may not be used as evidence in any subsequent impartial due process hearing or civil proceeding.

Neither the mediator nor any party to a mediation proceeding may record or transcribe discussions held during the mediation.

Any agreement reached at the mediation shall be signed by both the parent and representative of the NJEIS that has the authority to bind such agency before the conclusion of the mediation. The service coordinator will incorporate the terms of the mediation agreement into the IFSP as appropriate.

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

Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent impartial due process hearing or civil proceeding of any federal court or state court.

DOH has established procedures to offer you and NJEIS providers that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

- Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in New Jersey established under section 671 or 672 of IDEA; and
- Who explains the benefits of, and encourage the use of, the mediation process to you.

### **Due Process Hearings by the Office of Administrative Law (34 CFR 303.430 and 435-438)**

A statewide impartial due process hearing system is available to ensure that you may access a fair process for the resolution of individual disputes regarding the provision of early intervention services including the identification, evaluation and assessment, eligibility determination, placement or the provision of appropriate early intervention services.

An impartial due process hearing is an administrative hearing conducted by an administrative law judge from the Office of Administrative Law who is an impartial person and who has knowledge about Part C of the IDEA and the needs of and early intervention services available for eligible children and their families.

An impartial person means a person who:

- Is not an employee of DOH or a NJEIS provider agency involved in the provision of early intervention services;
- Is not involved in the care of the child; and
- Does not have a personal or professional interest that would conflict with the person's objectivity in implementing the hearing process.

The administrative law judge is not an employee of DOH, or a NJEIS provider agency solely because the administrative law judge is paid by the agency to implement the dispute resolution process.

A written request for an impartial due process hearing must be filed within one year of the date you knew or should have known about the alleged action that forms the basis for the request.

If a parent wishes to file a written request for an impartial due process hearing, the service coordinator, REIC, provider agency, and/or the Procedural Safeguards Office shall assist the parent, in the parent's primary language and/or mode of communication to the maximum extent possible.

A person requesting an impartial due process hearing may use the form at <http://www.state.nj.us/health/fhs/eis/procsafeguards.shtml> and send the form to:

- The Procedural Safeguards Office; and
- The other parties to provide notice to them of the issues in dispute.

The Procedural Safeguards Office requests that a parent requesting an impartial due process hearing, and a person making a request for an impartial due process hearing on a parent's behalf notify the Procedural Safeguards Office if the parent is to be represented at the impartial due process hearing no later than five days after the issuance of the notice to the Procedural Safeguards Office. However failure to inform the Procedural Safeguards Office will not preclude the parent from receiving representation from counsel.

The administrative law judge shall perform the following duties:

- Listen to the presentation of relevant views about the complaint/disagreement, examine all information relevant to the issues, and seek to reach a timely resolution of the disagreement; and
- Provide a record of the hearing proceedings, including a written decision.

Under the NJEIS, as a parent of child referred to Part C, you are given the rights listed below in any due process hearing carried out under this section.

- To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under NJEIS;
- To present evidence and confront, cross-examine, and to compel the attendance of witnesses;
- To prohibit the introduction of any evidence at the proceedings that has not been disclosed to you at least five calendar days before the proceeding;
- To obtain a written or electronic verbatim (word by word) transcription of the proceeding at no cost to the you; and
- To receive a written copy of the findings of facts and decisions at no cost to you.

Any proceedings for implementing the due process hearing process in this section must be carried out at a time and place that is reasonably convenient to you.

No later than 30 calendar days after the Procedural Safeguards Office receives your request for a hearing, the due process impartial proceeding required under this section is completed and a written decision is mailed to each of the parties. However, the Administrative Law Judge may grant specific extensions of time beyond the 30 day period at the request of either party. A copy of the decision is also placed in your child's early intervention record.

Any party not satisfied by the findings and decision of the due process hearing has the right to bring a civil action in state or federal court.

During the pendency (time period) of a due process hearing, unless the NJEIS and you agree otherwise, your child will continue to receive the appropriate early intervention services in the setting identified in the IFSP to which you consented. If your due process hearing complaint involves decisions related to the initial provision of services under Part C of the IDEA, the child must receive those services that are not in dispute.

### **Administrative Complaints (34 CFR 303.430 and .432-.434)**

You or your representative, other individuals, or organizations, including an organization or individual from another state, may file a complaint with the Procedural Safeguards Office alleging that an early intervention program, service provider, service coordinator, Regional Early Intervention Collaborative (REICs), the DOH, or any other state agency involved in the early intervention system is violating or has violated a requirement of federal or New Jersey law or NJEIS policies and procedures. If you want to file a complaint, you must file the complaint with the Procedural Safeguards Office. You may seek assistance with the filing of your complaint with the service coordination unit, REIC, provider agency, and/or the Procedural Safeguards Office. A complaint must include:

- A written statement that the DOH, an individual, an Early Intervention Program (EIP) provider agency, a Service Coordination Unit (SCU), a Regional Early Intervention Collaborative (REIC) has violated a requirement of federal or New Jersey law or NJEIS policies and procedures;
- The facts on which the complaint is based; and

- The signature and contact information of the complainant and if alleging violations with respect to a specific child:
  - The name and address of the residence of the child;
  - The name of the provider agency serving the child;
  - A description of the nature of the problem of the child, including facts relating to the problem; and
  - A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

The alleged violation must have occurred not more than one year before the date that the complaint is received by the Procedural Safeguards Office.

The party filing the complaint must forward a copy of the complaint to all parties including the provider agency serving the child at the same time the party files the complaint with the Procedural Safeguards Office.

During the investigation, the Procedural Safeguards Office:

- Makes a determination if an independent on-site investigation to the local or regional provider agency is necessary, and conducts the investigation accordingly;
- Provides the DOH, an individual, an EIP agency, a SCU, or a REIC with an opportunity to respond to the complaint, including at a minimum a:
  - Proposal to resolve the complaint; and
  - Opportunity for the complainant who has filed the complaint and the other parties to the complaint to voluntarily engage in mediation consistent with this document.
- Gives the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- Conducts interviews with the complainant, the respondent(s) and any other relevant party including REICs and state agencies, if necessary.
- Reviews all relevant information, including the results of any on-site investigation, pertinent written records and documents such as forms, reports and files, and any additional information provided by the party(s) and make an independent determination as to whether the DOH, an individual, an EIP agency, a SCU, or a REIC is violating a requirement of Part C of IDEA;
- After reviewing all relevant information, make an independent determination as to whether a violation of a Part C requirement or NJEIS policy and procedure has occurred.

Within 60 calendar days of receipt of the complaint, unless exceptional circumstances exist with respect to a particular complaint or the parent or you or the parties to the complaint agree to extend the time to engage in mediation. The Procedural Safeguards Office shall issue a written determination to the complainant and the named party(s) that addresses each allegation in the complaint and contains findings of fact and conclusions for each allegation in the complaint and the reasons for the Procedural Safeguards Office's final decision.

In resolving a complaint in which the Procedural Safeguards Office finds a failure to provide appropriate services, the Procedural Safeguards Office must address:

- How to remediate the denial of appropriate services, including, as appropriate, such as the awarding of monetary reimbursement, compensatory services, or crediting the family cost share if applicable or other corrective action appropriate to address the needs of the child and the child's family; and
- Appropriate future provision of services for all infants and toddlers with disabilities and their families.

The Procedural Safeguards Office has procedures for the effective implementation of the final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the Procedural Safeguards Office must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not part of the due process action must be resolved within the 60-calendar day timeline using the complaint procedures described above.

- If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties:
  - The hearing decision is binding on that issue; and
  - The Procedural Safeguards Office must inform the complainant to that effect.
- A complaint alleging a public agency, a service provider agency, or NJEIS failure to implement a due process decision must be resolved through the Procedural Safeguards Office.

### **THE RIGHT TO A SURROGATE PARENT (34 CFR 303.422)**

The NJEIS ensures that the rights of children are protected if:

- No parent, as defined below, can be identified;
- The service coordinator, after reasonable efforts, cannot locate a parent; or
- The child is a ward of the State under the laws of New Jersey.

Parent means:

- A biological or adoptive parent of a child;
- A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- A guardian generally authorized to make early intervention, educational, health or developmental decisions for the child. ;
- 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 who has been appointed in accordance with Part C of the IDEA.

Except as provided below, the biological or adoptive parent, when attempting to act as the parent under Part C and when more than one party is qualified to act as a parent, must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational or early intervention service decisions for the child.

If a judicial decree or order identifies a specific person or persons listed above to act as the “parent” of a child or to make educational or early intervention service decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of Part C of IDEA. However, if a provider agency or a public agency provides any services to a child or any family member of that child, that NJEIS provider agency or public agency may not act as a parent for that child.

In assigning children who are wards of the state or placed in foster care, the NJEIS must consult with the public agency that has been assigned care of the child.

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

An individual is assigned to act as a “surrogate” parent according to the procedures that follow. The procedures include a method for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child. The following criteria are employed when selecting surrogates:

- Surrogate parents are selected in the manner authorized by New Jersey law.
- Public agencies must ensure that a person selected as a surrogate parent:
  - Is not an employee of the lead agency or any other public agency or NJEIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child;
  - Has no personal or professional interest that conflicts with the interest of the child he or she represents; and
  - Has knowledge and skills that ensure adequate representation of the child; and

A person who is otherwise qualified to be a surrogate parent under this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

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

NJEIS must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

**CONTACT INFORMATION: For help in understanding your rights, you may contact anyone of the following:**

- **Your NJEIS Service Coordinator**
- **Regional Early Intervention Collaborative (REIC) [www.njeis.org](http://www.njeis.org)**
- **Disability Rights New Jersey (DRNJ) (609) 292-9742, Toll Free #: (800) 922-7233, TTY #: (609) 633-7106 <http://www.drnj.org/>**
- **Statewide Parent Advocacy Network (SPAN): (973) 642-8100 or Toll Free #: (800) 654-7726, [www.spannj.org](http://www.spannj.org)**
- **Department of Health (DOH), NJEIS Procedural Safeguards Office: (877) 258-6585 (Toll Free) P.O. Box 364 (50 E. State Street), Trenton, New Jersey 08625-0364, <http://nj.gov/health/fhs/eis/index.shtml>**