



NEW MEXICO

## **Early Childhood**

Education & Care Department

# **Notice of Child & Family Rights & Safeguards in New Mexico**

## **Part C | Early Intervention System**

Family Support and Early Intervention Division

FAMILY INFANT TODDLER (FIT) PROGRAM





# Child & Family Rights & Safeguards

The Individuals with Disabilities Education Act (IDEA) is the federal law which includes provisions for early intervention services for eligible infants and toddlers (birth to three) with disabilities and their families. These provisions form Part C of IDEA and are articulated in federal regulations and in State Regulations (7.30.8 NMAC)

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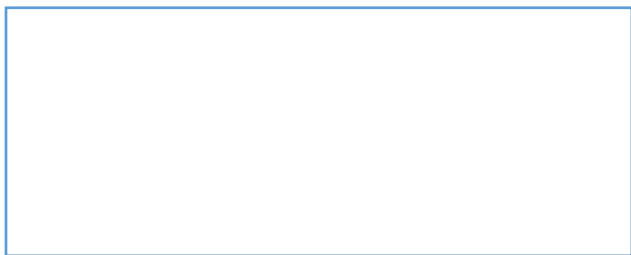


## Introduction

In New Mexico, the Part C early intervention system is called The Family Infant Toddler (FIT) Program. The system is designed to maximize family involvement and ensure parental consent in each step of the early intervention process, beginning with determination of eligibility and continuing through service delivery and transition.

The New Mexico Family Infant Toddler Program includes rights and procedural safeguards to protect parents and children. Parents must be informed about these safeguards in the FIT Program so that they can effectively participate in the services provided to their family. Notice of Child and Family Safeguards in the New Mexico Family Infant Toddler Program Part C Early Intervention System is an official notice of the safeguards of children and families as defined under Federal Part C regulations.

Information about child and family safeguards are provided to families through local early intervention providers, who are responsible for Part C early intervention services at the community level.



*Your Service Coordinator will provide ongoing information and assistance to you regarding your rights throughout the period of your child's eligibility for FIT services.*

*The contact information for your service coordinating agency is listed below:*

# Family Rights

You, as a parent, have the following rights within the New Mexico Family Infant Toddler Program

## **The right to have your child evaluated:**

When your child is referred to the Family Infant Toddler Program, you have the right to a multidisciplinary evaluation to determine eligibility. If you disagree with the results of the evaluations, you can request a due process hearing.

## **The right to plan for services within 45 days of referral:**

Within 45 days of referral, and if eligible for services, your family has the right to a written plan for services. This plan is called your \*Individualized Family Service Plan or IFSP and includes early intervention services based on your family's needs.

### **\*Individual Family Service Plan (IFSP)**

In New Mexico, appropriate early intervention services are determined through IFSP Process. The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in the IFSP. A team, including you, your service coordinator and early intervention staff, will develop this plan to decide what is best for your family and child. This plan is reviewed every 6 months or more frequently, according to your family's needs.

**The opportunity to receive evaluation, assessment, IFSP development, service coordination and procedural safeguards at no cost.**

## **The right to refuse evaluations, assessments and services:**

Your participation is voluntary. You must agree to services for your child and sign the IFSP before these services can begin.

## **The right to participate:**

You have a right to be invited to and participate in all meetings in which a decision is expected to be made regarding a proposal to change the identification, evaluation or placement of your child, or the provision of services to your child or family.

## **The right to receive written prior notice:**

You must be given timely notice in writing before a change is proposed or refused in the identification, evaluation, or placement of your child, or in the provision of services to your child or family. (see "A: Written Prior Notice" in next section for more information.)



**The opportunity to receive each early intervention service in natural environments to the extent appropriate to meet your child's developmental needs.**

**The right to maintenance of the confidentiality of personally identifiable information.**

**The right to review and, if appropriate, correct records.**

**The right to request mediation and/or impartial due process procedures to resolve parent/provider disagreements**

**The opportunity to file a complaint.**

# Family Safeguards

You are entitled to be notified of specific procedural safeguards under Part C. These safeguards are described below:

## Written Prior Notice

Written prior notice must be given to you within a reasonable time (five (5) calendar days) before a local participating agency/provider proposes or refuses to initiate or change the identification, evaluation or placement of your child, or the provision of appropriate early intervention services to you must be sufficiently detailed to inform you about:

- The action that is being proposed or refused.
- The reasons for taking the actions
- All procedural safeguards that are available under Part C
- The state's complaint and the timelines for those procedures

The notice must be:

- Written in language understandable to the general public and provided in your native language unless clearly not feasible to do so.
- If your native language or other mode of communication is not a written language the local participating agency/provider shall take steps to insure that:
  - ✓ The notice is translated orally or by other means in your native language or other mode of communication
  - ✓ You understand the notice
  - ✓ There is written evidence that the requirements of this section have been met
  - ✓ If you are deaf, blind, unable to read or have no written language, the mode of communication must be that normally used by you (such as sign language, braille or oral communication).

Native Language: the language or way of communication that a person acquires in early childhood because it is spoken in their home and their first environments.

## Parental Consent

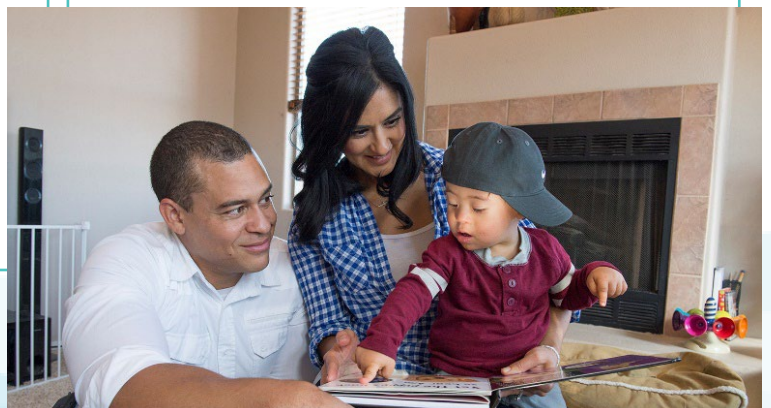
**Consent means that:**

- You are fully informed of all information about the activity(s) for which consent is sought. This information is provided in your native language unless clearly not feasible to do so, or other appropriate mode of communication.
- You understand and agree in writing to the carrying out of the activity(s) for which your consent is sought, and the consent describes the activity(s) and lists the records (if any) that will be released and to whom
- You understand that the granting of consent is voluntary on your part and may be revoked at any time

Your written consent must be obtained before the initial evocation and assessment of your child is conducted and before early intervention services are provided. If you do not consent, the local participating agency/provider shall make reasonable efforts to ensure that you:

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

In addition, as the parent of a child eligible under Part C, you may determine whether your child or other family member will accept or refuse any early intervention service(s) under this program. You may also refuse such a service after first accepting it without jeopardizing other early intervention services under this program. Finally, you have the right to written notice of and written consent to the exchange of any personally identifiable information collected, used or maintained under Part C, consistent with Federal and State Law.



## Records

### Examination of records

In accordance with the Confidentiality of Information procedures outlined in the next section of this document, you must be given the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints concerning your child, and any other portion of the Part C program involving records about your child and your family.

Your early intervention provider must give you the opportunity to inspect and review any records relating to your child, which are collected, maintained or used by the agency or provider under Part C. Your early intervention provider must comply with a request without unnecessary delay and before any meeting regarding an IFSP or hearing relating to identification, evaluation, placement, or provision of services for your child and family and, in no case, more than forty-five (45) calendar days after the request has been made.

The opportunity to inspect and review records includes:

- A response from your early intervention provider to reasonable requests for explanations and interpretations of the record
- The opportunity to request that your early intervention provider provide records containing the information if failure to provide those copies would effectively prevent you from exercising the opportunity to inspect and review the record
- Having someone who is representing you inspect and review the record.

Your early intervention provider may presume that you have the authority to inspect and review records relating to your child unless the agency or provider has been advised that you do not have the authority under applicable New Mexico law.

Your early intervention provider shall keep a written record of parties obtaining access to records collected, obtained, or used under Part C (except access by parents and authorized employees of such agency or provider), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the child's record. If any record includes information on more than one child, you may inspect and review only the information relating to your child, or to be informed of that specific information.

Your early intervention provider shall provide you, upon request, a list of the types and locations of records collected, maintained, or used by the agency or provider. The early intervention provider may charge a fee for copies of records which are made for parents under Part C if the fee does not effectively prevent you from exercising your opportunity to inspect and review those records. However, they may not charge a fee to search for or to retrieve information under Part C.

If you believe that information in records collected, maintained, or used under Part C is inaccurate or misleading, or violates the privacy or other rights of your child or family, you may request the provider,

which maintains the information, to amend the information.

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

Your early intervention provider, on request, must 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.

- If, as a result of the hearing, your provider 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 must inform you in writing.
- If, as a result of the hearing, your provider decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, you must be informed of your right to place in the records of your child, a statement commenting on the information, and setting forth any reasons for disagreeing with the decision of the agency or provider.

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

- Be maintained by your early intervention provider 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 or provider
- If the records of your child or the contested portion are disclosed by such agency or provider to any party, the explanation must also be disclosed to the party

A hearing held under this section must be conducted according to the procedures under the Family Education Rights & Privacy Act (FERPA), which is found in statute at 20 U.S.C. §1232g, and in federal regulations at 34 CFR Part 99.



## Confidentiality

All information on your child and family is confidential. Sometimes, your early intervention provider may need to get or share information about your child to determine eligibility or to get services. Your early intervention provider must get your permission to request information or share information with other agencies or service providers. It is up to you if you want to share this information.

Your early intervention provider must keep a record of who looks at your files. You can ask for a written explanation about how private information is protected by your early intervention provider.

Information from your child's early intervention record cannot be released to local service providers without your consent unless the agency or provider is authorized to do so under FERPA. If you refuse to provide consent, your early intervention provider may initiate due process procedures for resolving this disagreement.

The following safeguards must be in place to ensure confidentiality of records:

- Your early intervention provider must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages
- All persons collecting or using personally identifiable information must receive training or instruction regarding New Mexico's Part C policies and procedures which comply with IDEA and FERPA
- Your early intervention provider must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally identifiable information
- Your early intervention provider must inform parents when personally identifiable information collected, maintained, or used under Part C is no longer needed to provide services to the child; and the information must be destroyed, at the request of the parents. (Permanent records of your child's name, address, and phone number may be maintained.)

Parental consent must be obtained before personally identifiable information is:

- ✓ Disclosed to anyone other than officials of the agency/provider in collecting or using information under Part C, unless authorized to do so under FERPA (34 CFR 99.31)
- ✓ Used for any purpose other than meeting a requirement under Part C. 34 CFR 300.571

## Resolving Disagreements / Complaints

If you feel your early intervention provider or a state agency has ignored or violated a federal or state regulation regarding services to your child and family, you can write a letter of complaint to the Program Manager of the Family Infant Toddler Program (see address at right). After receiving your written complaint, a staff person will be assigned to investigate and gather information from you and others concerned. The Family Infant Toddler Program office will review all of the information and reach a decision about your complaint within 60 days.

If you disagree with your early intervention provider on the identification, evaluation, placement of your child, or provision of appropriate early intervention services to your child or family, your service coordinator may be able to help resolve the disagreement informally.

Your local early intervention provider also has a complaint procedure that can be used if you have a disagreement.

If you are not able to reach agreement with your early intervention provider, you can call the Family Infant Toddler Program (toll free 1-877-696-1472) and ask for the staff person assigned to your early intervention provider. This person will try to help you to resolve the disagreement. You can also request **mediation or a due process hearing** to resolve a disagreement. (See Below)

During the pendency (time period) of any proceeding involving a parent/provider disagreement (complaint), unless your participating agency/provider and you otherwise agree, your child and family will continue to receive the appropriate early intervention services currently being provided.

If the disagreement (complaint) between you and the provider involves an application for initial services, your child and family must be provided those services that are not in dispute.

**Mediation** is a process in which trained mediators assist people who disagree, to communicate and make informed choices in order to find a resolution to their dispute. The mediator is impartial, neutral, and unbiased.

To request mediation please send a letter to the program manager of the Family Infant Toddler Program at the following address:

**Department of Health Long Term Services Division  
1190 St. Francis Drive PO Box 26110  
Santa Fe, NM 87502- 6110**

The mediation meeting will be held within 30 days of your request. Choosing mediation as a way to resolve your disagreement does not deny your right to request a due process hearing.



Parental consent must be obtained before personally identifiable information is:

- ✓ Disclosed to anyone other than officials of the agency/provider in collecting or using information under Part C, unless authorized to do so under FERPA (34 CFR 99.31)
- ✓ Used for any purpose other than meeting a requirement under Part C. 34 CFR 300.571



## Surrogate Parents

The rights of children eligible under Part C are protected even if:

- No parent can be identified
- The local participating agency/provider, after reasonable efforts, cannot determine the whereabouts of a parent
- The child is a ward of the state of New Mexico. Legal custody of the child and all parental rights and responsibilities for the care and custody of the child have been terminated by Court order or permanent entrustment agreement pursuant to applicable law.

An individual is assigned to act as a "surrogate" for the 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 to the child. The following criteria are employed when selecting surrogates:

- Surrogate parents are selected at the local level in the manner allowable under New Mexico law; and
- A person selected as a surrogate parent:
  - Has no interest that conflicts with the interest of the child he or she represents
  - Has knowledge and skills that ensure adequate representation of the child
  - Is not an employee of any state agency; or a person or an employee of any person providing early intervention services to the child or to any family member of the child. A person who otherwise qualifies to be a surrogate parent under this section is not an employee solely because he or she is paid by a local participating agency/provider to serve as a surrogate parent
  - Is in the same general geographic area as the child, whenever possible

A surrogate parent may represent the child in all matters relating to:

- The evaluation and assessment of the child
- Development and implementation of the child's IFSP, including annual evaluations and periodic reviews
- The ongoing provision of early intervention services to the child
- Any other rights established under Part C



## Contact Information

The State Lead Agency for the New Mexico Family Infant Toddler Program Part C Early Intervention System is the New Mexico Department of Health. To file a complaint, or to find out more about complaint procedures in New Mexico, including resolution of disputes through mediation and/or impartial due process hearing | contact:

**Early Childhood Education  
& Care Department  
Family Infant Toddler Program**

PO Drawer 5619  
Santa Fe, New Mexico 87502 – 5619

**Phone: (877) 696 – 1472**  
*\*Ask for the FIT Program\**  
**Fax: (505) 827 - 2455**

# ABC's of Early Intervention

## Assessment

An ongoing process including the use of tests and tools to identify your child's or family's needs and strengths

## Child's Record

is the file that includes evaluations, reports, progress notes and the child's IFSP, which is maintained by the service coordinator

## Consent

the written permission or authorization that a family provides to proceed with an evaluation, services or to exchange personally identifiable information

## Development

the process of learning and mastering new skills over time; includes ability to move, communicate, think, see, hear and play with toys or other people.

## Due Process Hearing

A hearing involving a hearing officer who rules on evidence related to a disagreement between a parent and an early intervention provider

## Early Intervention

A collection of services provided by public and private agencies and mandated under law to support eligible children and their families in enhancing a child's potential growth and development from birth to age three.

## Eligibility

Requirements your child must meet in order to receive early intervention services from the New Mexico Family Infant Toddler Program

## Evaluation

determining your child's eligibility by gathering information about your child from records, assessments and using professional judgment

## Family Infant Toddler (FIT) Program

The program at the Department of Health that oversees the delivery of early intervention in New Mexico through a network of public and private providers.

## Individuals with Disabilities Education Act (IDEA) Part C

The federal legislation that determines the implementation of early intervention by states.

## Individualized Education Program (IEP)

A written plan for your child's and family's desired outcomes and services to meet those outcomes during your time in the FIT program.

## Individualized Family Service Plan (IFSP)

A written plan for your child's and family's desired outcomes and services to meet those outcomes during your time in the FIT program.

## IFSP Team

the team includes you, your service coordinator and other professionals involved in providing ongoing services to your family and anyone else who you'd like to be included (ex. other family members, childcare staff, pediatrician)

## Intake

When your service coordinator meets with you and explains about the Family Infant Toddler Program, goes over your rights and helps to plan your child's evaluation.

## Mediation

A way to settle a conflict so that both sides win. Parents and other professionals discuss their differences and, with the help of a trained and independent mediator, reach a settlement that both sides accept.

## Natural Environments

Settings that are natural or normal for the child's age peers who have no disabilities and include the home, childcare and other community settings

## Outcomes

Statements of changes you want for your child and family that are documented in your IFSP

## Parent

Includes the biological parent(s), guardian, acting parent (including foster parents) or surrogate parent (assigned by the state in situations where there is no other person to act as parent at the IFSP).

## Referral

When a parent or professional (with the parents' permission) thinks that a child may benefit from early intervention services and makes contact with CMS (Children's Medical Services) or a local early intervention provider.

## Service Coordinator

A person who works with your family to help coordinate the evaluation, the IFSP and early intervention services as well as other community support and resources for your child and family.

## Special Education

Specially designed instruction and services to meet the education needs of children over the age of three. Provided by the local school district for children who are eligible in preschool or other settings

## Strategies

the methods and activities developed to achieve outcomes. Strategies are written into the IFSP

## Transition

the process of planning for supports and services for when your child will leave the Family Infant Toddler Program or if you move to a new community.





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## Family Support and Early Intervention Division

### FAMILY INFANT TODDLER (FIT) PROGRAM

