

NEBRASKA EARLY DEVELOPMENT NETWORK



IDEA Part C Procedural Safeguards

March 2015, revised Aug. 2018 and Feb. 2022

Nebraska Part C Co-Lead Agencies

Department of Health and Human Services
Division of Medicaid and Long-Term Care

Department of Education
Office of Special Education

It is the policy of the Nebraska Department of Education not to discriminate on the basis of gender, disability, race, color, religion, marital status, age, national origin or genetic information in its education programs, administration, policies, employment or other agency programs.

IMPORTANT INFORMATION

My Services Coordinator's Information:

Name: _____

Phone: _____

Email: _____

My EDN services coordination agency, school district or approved cooperative's Information:

Name: _____

Phone: _____

Email: _____

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Introduction

The Early Development Network (EDN) provides services and supports based on the needs of children birth to age three and their families with the belief that parents know what is best for their families. These services are designed to act on what families think is important for their child and family. The EDN is a collaborative effort of the Nebraska Departments of Education and Health and Human Services to meet the needs of infants and toddlers with disabilities and their families. EDN provides the early intervention services that are regulated by the federal law, “Individuals with Disabilities Education Act” (IDEA)-Part C.

Parents have rights known as procedural safeguards that apply to every aspect of the early intervention process, including evaluation, access to records, and parental involvement in developing the Individualized Family Service Plan (IFSP). State and federal laws and regulations outline what needs to happen to enhance the growth and development of eligible infants and toddlers with disabilities or developmental delays.

This document serves as the procedural safeguards notice and provides information regarding parental rights through the Federal law, IDEA Part C, as well as Nebraska’s rules and policies.

For more information on your rights, contact any of the following:

- Your services coordinator
- Your local EDN services coordination agency, school district or approved cooperative (ask for the Director of Special Education)
- The Nebraska Department of Education
- The Nebraska Department of Health and Human Services

PTI-Nebraska

(Parent Training and Information Center)
1941 S 42nd St Suite 205
Omaha, NE 68105
402-346-0525
800-284-8520
reception@pti-nebraska.org

Disability Rights Nebraska

(Advocacy Services)
134 South 13th St, Suite 600
Lincoln, NE 68508
402-474-3183
800-422-6891
info@disabilityrightsnebraska.org

General Information

Prior Written Notice

Notice

Your services coordinator or school district/approved cooperative must give you written notice (provide you certain information in writing), for the following:

- Proposing to initiate or to change the identification, evaluation, or placement of your infant or toddler, or the provision of early intervention services to your infant or toddler with a disability and your family.
- Refusing to initiate or change the identification, evaluation, or placement of your infant or toddler, or the provision of early intervention services to your infant or toddler with a disability and your family.

This notice must be given to you within a reasonable time after the provider's decision on the proposal or refusal has been made but before the service provider implements the action.

Content of notice

The written notice must:

1. Describe the action that is being proposed or refused;
2. Explain why the action is being proposed or refused; **and**
3. Inform you that you have protections under the procedural safeguard provisions in Part C of the IDEA including:
 - a. A description of mediation, **and**
 - b. How to file a state complaint or a due process complaint (and timelines) when you believe Early Intervention Services requirements are violated.

Notice in understandable language

The notice must be:

1. Written in a language understandable to the general public; **and**
2. Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, the services coordinator and/or EDN services coordination agency, school district or approved cooperative must ensure that:

1. The notice is translated for you orally by other means in your native language or other mode of communication;
2. You understand the content of the notice; **and**
3. There is written evidence that 1 and 2 have been met.

Native language

Native language, when used with an individual who has limited English proficiency, means the following:

- The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
- In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

Parental Consent

Definition

Consent means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.
2. You understand and agree in writing to that action, and the consent form describes that action and lists the records (if any) that will be released and to whom; **and**
3. You understand that the consent is voluntary on your part and you may withdraw your consent at any time.

Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

Consent for screening

Prior to receiving early intervention services, your child must first be found to be a child with a disability. In order to determine whether or not your infant or toddler has a disability that would require early intervention services, the school district or approved cooperative may choose to screen your infant or toddler. If the school district or approved cooperative proposes to screen your infant or toddler, they must notify the services coordinator. The services coordinator will ask you to provide consent in writing for the screening.

During the screening, if the screening or other available information shows that the child is:

- Suspected of having a disability, the services coordinator will provide you another notice and request your consent to conduct an evaluation and assessment of your infant or toddler.
- Not suspected of having a disability, the school district or approved cooperative will inform you in writing the results of the screening and provide you notice of your right to request an evaluation for your infant or toddler.

You may request and provide consent for an evaluation at any time during the screening process. If you request and provide consent for an evaluation, then the school district or approved cooperative is required to evaluate your infant or toddler.

Consent for evaluation and assessments

An evaluation of your child cannot be conducted to determine whether your child is eligible under Part C of the IDEA to receive early intervention services without first providing you with prior written notice of the proposed action and obtaining your written consent as described under the heading **Parental Consent**.

Your services coordinator must make reasonable efforts to obtain your informed written consent for an evaluation to decide whether your infant or toddler is a child with a disability.

Your consent for evaluation does not mean that you have also given your consent for the provision of early intervention services to your child and family.

If you have refused to provide consent or failed to respond to a request to provide consent for an evaluation, your EDN services coordination agency, school district or approved cooperative must make reasonable efforts to ensure that you:

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

The EDN services coordination agency, school district or approved cooperative may not use due process hearing procedures as described under the heading **Due process hearing procedures**.

Consent for services

Your EDN services coordination agency, school district or approved cooperative must obtain your informed consent before providing early intervention services.

You may determine whether you, your infant or toddler, or other family members will accept or decline any early intervention service at any time. You may decline a service after first accepting it, without jeopardizing other early intervention services.

Consent to use private insurance to pay for Part C services

You must provide written informed consent if your school district/approved cooperative or early intervention services (EIS) provider seeks to use your private insurance or benefits to pay for:

1. The initial provision of an early intervention service in the IFSP; **and**
2. Increase the frequency, length, duration, or intensity in the provision of services in the IFSP.

Confidentiality of Information

Definitions

As used under the heading **Confidentiality of Information**:

- *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

- *Early intervention records* means all records regarding a child that are required to be collected, maintained or used under regulations for providing early intervention services.
- *Participating agency* means any EDN services coordination agency, school district or approved cooperative that collects, maintains, or uses personally identifiable information to implement early intervention services.

Personally Identifiable

Personally identifiable means information that has:

- a) Your child's name, your name as parent, or the name of another family member;
- b) Your child's address;
- c) A personal identifier, such as your child's social security number; **or**
- d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Notice to Parents

The Nebraska Departments of Education and Health and Human Services must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information including:

1. A description of the extent to which the notice is given in the native language of the various population group 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 rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA and its implementing regulation in 34 CFR99).

Access Rights

The participating agency must permit you to inspect and review any early intervention records relating to your child that are collected, maintained, or used by your EDN services coordination agency or school district/approved cooperative under Part C of the IDEA. The participating agency must comply with your request to inspect and review any early intervention records on your child without unnecessary delay and before any meeting regarding an IFSP, or any impartial due process hearing (including a resolution meeting), and in no case more than 10 days after the request has been made.

Your right to inspect and review early intervention records includes:

1. Your right to a response from the participating agency to your reasonable requests for explanations and interpretations of the records;

2. Your right to request that the participating agency provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
3. Your right to have your representative inspect and review the records.

The participating agency may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable State laws governing such matters as custody, foster care, guardianship, or separation, and divorce.

Record of Access

Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under Part C of the IDEA (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.

Records on More Than One Child

If any early intervention 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.

List and Types of Locations of Information

On request, each participating agency must provide you with a list of the types and locations of early intervention records collected, maintained, or used by the agency.

Fees

Each participating agency may charge a fee for copies of records that are made for you under Part C of the IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

A participating agency may not charge a fee to search for or to retrieve information under Part C of the IDEA.

A participating agency must provide, at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible but no later than 7 days after each IFSP meeting.

Amendment of Records at Parent's Request

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

The participating agency must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose as described under the heading **Opportunity For a Hearing**.

Opportunity for a Hearing

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

Hearing Procedures

A hearing to challenge information in early intervention records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

Result of Hearing

If, as a result of the 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 change the information accordingly and inform you in writing.

If as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency.

Such an explanation placed in the records of your child must:

1. Be maintained by the participating agency as part of the records of your child as long as the record or contested portion is maintained by the participating agency; **and**
2. If the participating agency discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

Consent for Disclosure of Personally Identifiable Information

Unless the information is contained in early intervention records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies (including the Nebraska Departments of Education and Health and Human Services and early intervention service providers).

Safeguards

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

One official at each participating agency 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 your State's policies and procedures regarding confidentiality under Part C of the IDEA and the Family Educational Rights and Privacy Act (FERPA).

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.

Destruction of Information

Your EDN services coordination agency, school district or approved cooperative must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide early intervention services to your child.

The information must be destroyed at your request. However, a permanent record of your child's name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and early intervention service provider(s), and exit data (including year and age upon exit, and any program entered into upon exiting) may be maintained without time limitation.

Conflict Resolution

Adoption of State Complaint Procedures

General

The Nebraska Departments of Education and Health and Human Services must have written procedures for the following.

1. Resolving any complaint, including a complaint filed by an organization or individual from another State.
2. Providing for the filing of a complaint with the Departments of Education and Health and Human Services.
3. Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers and other appropriate entities.

Remedies for denial of appropriate services

In resolving a complaint in which the Departments of Education and Health and Human Services has found a failure to provide appropriate services, the Departments of Education and Health and Human Services must address:

1. The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and
2. Appropriate future provision of services for all infants and toddlers with disabilities and their families.

Filing a Complaint

An organization or individual may file a signed written State complaint under the procedures described below.

The State complaint must include:

1. A statement that a school district or other public agency has violated a requirement of Part C of the IDEA or its regulation;
2. The facts on which the statement is based;

3. The signature and contact information of the complainant; and
4. If alleging violations regarding a specific child:
 - a. The name of the child and address of the residence of the child;
 - b. The name of the EDN services coordination agency, school district or approved cooperative serving the child;
 - c. A description of the nature of the problem of the child, including facts relating to the problem; and
 - d. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Procedures***.

The party filing the State complaint must forward a copy of the complaint to the EDN services coordination agency, school district or approved cooperative serving the child at the same time the party files the complaint with the Nebraska Department of Education.

Minimum State Complaint Procedures

Time limit; minimum procedures

Within 60 days of the complaint being filed, the Nebraska Department of Education will:

1. Carry out an independent on-site investigation, if the Nebraska Department of Education determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the school district or other public agency with the opportunity to respond to the complaint, including, at minimum:
 - a. At the option of the agency, a proposal to resolve the complaint; **and**
 - b. an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
4. Review all relevant information and make an independent determination as to whether the school district or other public agency is violating a requirement of Part C of the IDEA; **and**
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:
 - a. Findings of fact and conclusions; **and**
 - b. The reasons for the Nebraska Department of Education's final decision

Time extension

The Nebraska Department of Education must permit an extension of the 60 calendar-day time limit only if:

1. Exceptional circumstances exist with respect to a particular complaint; **or**

2. The parent and the school district or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available to the State.

Final Decision – Implementation

The Nebraska Department of Education must include procedures for effective implementation of the Department’s final decision, if needed, including;

1. Technical assistance activities;
2. Negotiations; **and**
3. Corrective actions to achieve compliance.

State complaints and due process hearings

If a written State complaint is received that is also the subject of a due process hearing as described below under the heading **Filing a Due Process Complaint**, or the State complaint contains multiple issues of which one or more are part of such a hearing, the State must set aside the State complaint, or any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue is raised in a State complaint has previously been decided in a due process hearing involving the same parties (you and the EDN services coordination agency, school district or approved cooperative), then the due process hearing decision is binding on that issue and the Nebraska Department of Education must inform the complainant that the decision is binding.

A complaint alleging a school district’s or approved cooperative’s failure to implement a due process hearing decision must be resolved by the Nebraska Department of Education.

Due Process Complaint Procedures

Filing a Due Process Complaint

General

You, the school district/approved cooperative, or Co-Lead agency may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the following:

1. Identification,
2. Evaluation, **or**
3. Placement of your infant or toddler; **or**
4. The provision of free appropriate public education (FAPE) early intervention services to your infant or toddler.

The due process complaint must allege a violation that happened not more than two years before you or the EDN services coordination agency, school district or approved cooperative knew or should have known about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

1. The EDN services coordination agency, school district or approved cooperative specifically misrepresented that it had resolved the issues identified in the complaint; **or**
2. The EDN services coordination agency, school district or approved cooperative withheld information from you that it was required to provide you under Part C of the IDEA.

Information for parents

The EDN services coordination agency, school district or approved cooperative must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, **or** if you or the school district/approved cooperative file a due process complaint.

Due Process Complaint

General

In order to request a hearing, you or the school district/approved cooperative (or your attorney or the school district's/approved cooperative's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

You or the school district/approved cooperative, whichever one filed the complaint, must also provide the Nebraska Department of Education with a copy of the complaint.

Content of the complaint

The due process must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the early intervention service (EIS) provider serving the child;
4. In the case of a homeless child, the child's contact information and the name of the EIS provider serving the child;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to you or the school district/approved cooperative at the time.

Sufficiency of complaint

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the school district/approved cooperative) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification the receiving party (you or the school district/approved cooperative) considers a due process complaint insufficient, the hearing officer must

decide if the due process complaint meets the requirements listed above, and notify you and the school district/approved cooperative in writing immediately.

Complaint amendment

You or the school may make changes to the complaint only if:

1. The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described below; **or**
2. By no later than five days before the due process hearing begins, the hearing office grants permission for the changes.

If the complaining party (you or the school district/approved cooperative) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

EDN services coordination agency, school district or approved cooperative's response to a due process complaint

If the EDN services coordination agency, school district or approved cooperative has not sent a prior notice to you, as described under the heading **Prior Written Notice**, regarding the subject matter contained in your due process complaint, the EDN services coordination agency, school district or approved cooperative must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why the school district or early intervention services (EIS) provider proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your IFSP team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the school district/approved cooperative or EIS provider used as the basis for the proposed or refused action; **and**
4. A description of other factors that are relevant to the school district's/approved cooperative's or EIS provider's proposed or refused action.

Providing the information in items 1-4 above does not prevent the school district from asserting that your due process complaint was insufficient.

Other party response to a due process complaint

Except as stated under the sub-heading immediately above, **EDN services coordination agency, school district or approved cooperative's response to a due process complaint**, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

The child's early intervention services while the due process complaint and hearing are pending

Once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and

the State or school district/approved cooperative agree otherwise, the child must continue to receive the appropriate FAPE early intervention services in the setting identified in the IFSP that was consented to by you.

If the due process complaint involves an application for initial services, the child must receive those services that are not in dispute.

Resolution Process

Resolution meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the EDN services coordination agency, school district or approved cooperative must convene a meeting with you and the relevant member or members of the IFSP team who have specific knowledge of the facts identified in your due process complaint. The meeting:

1. Must include a representative of the EDN services coordination agency, school district or approved cooperative who has decision-making authority on behalf of the school district/approved cooperative; **and**
2. May not include an attorney of the EDN services coordination agency, school district or approved cooperative unless you are accompanied by an attorney.

You and the EDN services coordination agency, school district or approved cooperative determine the relevant members of the IFSP Team to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the EDN services coordination agency, school district or approved cooperative has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. You and the EDN services coordination agency, school district or approved cooperative agree in writing to waive the meeting; **or**
2. You and the EDN services coordination agency, school district or approved cooperative agree to use the mediation process, as described under the heading **Mediation**.

Resolution period

If the EDN services coordination agency, school district or approved cooperative has not resolved the due process complaint to the satisfaction of the parties within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45 calendar-day timeline for issuing a final decision begins at the expiration of the 30 calendar-day resolution period, with certain exceptions for adjustments made to the 30 calendar-day resolution period, as described below.

Except where you and the EDN services coordination agency, school district or approved cooperative have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If after making reasonable efforts and documenting such efforts, the EDN services coordination agency, school district or approved cooperative is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30 calendar-day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the EDN services coordination agency, school district or approved cooperative's attempts to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and
3. Detailed records of visits made to your home or place of employment and the results of those visits.

If the EDN services coordination agency, school district or approved cooperative fails to hold the resolution meeting within 15 calendar-days of receiving notice of your due process complaint **or** fails to participate in the resolution meeting, you may ask a hearing officer to order that the 45 calendar-day due process timeline begin.

Adjustments to the 30-calendar day resolution period

If you and the EDN services coordination agency, school district or approved cooperative agree in writing to waive the resolution meeting, then the 45 calendar-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30 calendar-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the school district/approved cooperative withdraws from the mediation process, then the 45 calendar-day timeline for the due process hearing starts the next day.

Written settlement agreement

If a resolution to the dispute is reached at the resolution meeting, you and the EDN services coordination agency, school district or approved cooperative must enter into a legally binding agreement that is:

1. Signed by you and a representative of the school district/approved cooperative who has the authority to bind the school district/approved cooperative; **and**
2. Enforceable in any State court of competent jurisdiction (a State court that has the authority to hear this type of case) or in a district court of the United States.

Agreement review period

If you and the EDN services coordination agency, school district or approved cooperative enter into an agreement as a result of a resolution meeting, either party (you or the school district/approved cooperative) may void the agreement within 3 business days of the time that both you and the EDN services coordination agency, school district or approved cooperative signed the agreement.

Mediation

General

The Co-Leads must make mediation available to allow you and the EDN services coordination agency, school district or approved cooperative to resolve disagreements involving any matter under Part C of

the IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part C of the IDEA, whether or not you have filed a due process complaint or requested a due process hearing as described under the heading ***Filing a Due Process Complaint***.

Requirements

The procedures must ensure that the mediation process;

1. Is voluntary on your part and the school district's/approved cooperative's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under Part C of the IDEA; **and**
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The Co-Leads may develop procedures that offer parents and school districts or approved cooperatives that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State; **and**
2. Who would explain the benefits and encourage the use of the mediation process to you.

The State must have a list of people who are qualified mediators and know the laws and regulations relating to the provision of early intervention services. The Nebraska Department of Education must select mediators on a random, rotational, or other impartial basis.

The State is responsible for the cost of the mediation process, including the costs of meetings.

If you and the EDN services coordination agency, school district or approved cooperative resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution that:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; **and**
2. Is signed by both you and a representative of the EDN services coordination agency, school district or approved cooperative who has the authority to bind the EDN services coordination agency, school district or approved cooperative.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Impartiality of mediator

The mediator:

1. May not be an employee of the Nebraska Department of Education or the school district/approved cooperative that is involved in the provision of early intervention services (EIS) of your child; **and**
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district, approved cooperative, EIS service provider, or State agency solely because he or she is paid by the agency or school district/approved cooperative to serve as a mediator.

Hearings on Due Process Complaints

Impartial Due Process Hearing

General

Whenever a due process complaint is filed, you or the school district/approved cooperative involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections.

Impartial hearing officer

At minimum, a hearing officer:

1. Must not be an employee of one of the Departments of Education or Health and Human Services, or the EIS provider that is involved in the early intervention services or care of the infant or toddler. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of the IDEA, and Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; **and**
4. Must have knowledge and ability to conduct hearing, and to make and write decisions consistent with appropriate, standard legal practice.

The Nebraska Department of Education must keep a list of those persons who serve hearing officers that includes a statement of the qualifications of each hearing officer.

Subject matter of due process hearing

The party (you or the school district/approved cooperative) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Timeline for requesting a hearing

You or the school district/approved cooperative must request an impartial hearing on a due process complaint within two years of the date you or the school district knew or should have known about the issue addressed in the complaint.

Exceptions to the timeline

The above timeline does not apply to you if you could not file a due process complaint because;

1. The EDN services coordination agency, school district or approved cooperative specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; **or**
2. The EDN services coordination agency, school district or approved cooperative withheld information from you that it was required to provide to you under Part C of the IDEA.

Hearing Rights

General

Any party to a due process hearing has the right to:

1. Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of infants or toddlers with disabilities;
2. Present evidence and confront, cross-examine, and require the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
4. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
5. Obtain written, or at your option, electronic findings of fact and decisions.

Additional disclosure of information

At least five business days prior to a due process hearing, you and the school district/approved cooperative must disclose to each other all evaluations completed by that date and recommendations based on those evaluation that you or the school district/approved cooperative intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parental rights at hearings

You must be given the right to:

1. Open the hearing to the public; **and**
2. Have the record of the hearing, the findings of fact, and decisions provided to you at no cost.

Hearing Decisions

Decisions of hearing officer

A hearing officer's decision on whether your infant or toddler was appropriately identified, evaluation, or placed, or whether your infant or toddler and family were appropriately provided early intervention services must be made on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that your infant or toddler was not appropriately identified, evaluated, or provided early intervention services only if the procedural inadequacies:

1. Impeded your child's right to identification, evaluation, and placement or provision of early intervention services

2. Significantly interfered with your opportunity to participate in the decision-making process regarding identification, evaluation, placement or provision of early intervention services for your child or family; **or**
3. Caused a deprivation of educational or developmental benefit.

Construction clause

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a EDN services coordination agency, school district or approved cooperative to comply with the requirements in the procedural safeguards section of the Federal regulations under Part C of the IDEA (34 CFR §303.430 through §303.449).

Separate request for a due process hearing

Nothing in the procedural safeguards section of the Federal regulations under Part C of the IDEA (34 CFR §303.430 through §303.449) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Findings and decision to advisory panel and general public

The Nebraska Department of Education or the school district/approved cooperative, (whichever was responsible for your hearing) after deleting any personally identifiable information, must make those findings and decisions available to the public.

Appeals

Finality of Decision; Appeal; Impartial Review

A decision made in a due process hearing is final, except that any party involved in the hearing (you, or the school district/approved cooperative) may appeal the decision by bring a civil action, as described below.

Timelines and Convenience of Hearings and Reviews

The Nebraska Department of Education must ensure that no later than 45 calendar days after the expiration of the 30 calendar-day period for resolution meetings **or**, as described under the sub-heading ***Adjustments to the 30 calendar-day resolution period***, not later than 45 calendar days after the expiration of the adjusted time period:

1. A final decision is reached in the hearing; **and**
2. A copy of the decision is mailed to each of the parties.

A hearing office may grant specific extensions of time beyond the 45 calendar-day time period described above at the request of either party.

Each hearing must be conducted at a time and place that is reasonably convenient to you.

Civil Actions, Including the Time Period in Which to File Those Actions

General

Any party (you or the school district/approved cooperative) who does not agree with the findings and the decision in the due process hearing has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

Time limitation

The party (you or the school district/approved cooperative) bringing the action shall have 90 calendar days from the date of the decision of the hearing officer to file a civil action.

Additional procedures

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the school district's/approved cooperative's request; **and**
3. Base its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Jurisdiction of district courts

The district courts of the United States have authority to rule on actions brought under Part C of IDEA without regard to the amount in the dispute.

Rule of construction

Nothing in Part C of the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before filing of a civil action under these laws seeking relief that is also available under Part C of the IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part C of the IDEA. This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws; you must first use the available administrative remedies under the IDEA (i.e., the due process complaint, resolution meeting, and impartial due process hearing procedures) before going directly into court.

Attorney's Fees

General

In any action or proceeding brought under Part C of the IDEA, if you prevail, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you.

In any action or proceeding brought under Part C of the IDEA, the court in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency, school district, or approved cooperative, to be paid by you or your attorney, if you or your attorney:

- a. Filed a complaint or court case that the court finds is frivolous, unreasonable or without foundation;
- b. Continued to litigate after the litigation clearly become frivolous, unreasonable, or without foundation; **or**
- c. Requested the due process or court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding.

Award of fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part C of the IDEA for services performed after a written offer of settlement to you if:
 - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
 - b. The offer is not accepted within 10 calendar days; **and**
 - c. The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

3. Fees may not be awarded relating to any meeting of the IFSP team unless the meeting is held as a result of an administrative proceeding or court action.

Fees may also not be awarded for a mediation as described under the heading **Mediation**.

A resolution meeting, as described under **Resolution meeting**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for the purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under Part C of the IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;

3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing you did not provide the school district the appropriate information in the due process request notice as described under the heading ***Due Process Complaint***.

However, the court may not reduce fees if the court finds that the State or school district unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part C of the IDEA.

Receipt for the *Notice of Procedural Safeguards*

(as required by the Individuals with Disabilities Act (IDEA) 34 Code of Federal Regulations – Part 303)

Each time the *Notice of Procedural Safeguards* is distributed receipt must be documented.

This is to verify that I have received a copy of the *Notice of Procedural Safeguards* which informs me of my rights throughout my child’s early intervention services process.

I understand that the school district/approved cooperative or services coordination agency personnel provider will document each time I am given, sent, or offered a copy of the *Notice of Procedural Safeguards*.

Notice of Procedural Safeguards was provided or offered by the following person.

Name: _____
Position: _____
Date Provided: _____

Notice of Procedural Safeguards received by or offered to the following person.

Name of Child: _____
Name of Parent/Guardian: _____
Parent/Guardian’s Signature: _____
Date Signed: _____
Signature of Interpreter (if used): _____
Date Signed: _____