

# ***Early On*<sup>®</sup> Procedural Safeguards Protecting Families' Rights**



**Michigan Department of Education  
Office of Great Start/Early Childhood  
Development and Family Education**

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*Note: This document was updated with name change for the free statewide special education mediation program.*



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# Procedural Safeguards Protecting Families' Rights

## ***What Are Family Rights?***

As the parent of a child who is or may be eligible for *Early On*, you have rights. They support a positive and high-quality experience with *Early On*.

## ***What Are Procedural Safeguards?***

Procedural safeguards are the checks and balances that are built into the *Early On* system to help make sure everything goes well for your child and family and protect your family's rights. Procedural safeguards are part of the federal law called the Individuals with Disabilities Education Act (IDEA) that regulates *Early On*. Their purpose is to guard your rights and ensure that the *Early On* process happens as it is supposed to for you and your child.

## ***When Do Our Rights Apply?***

Your rights and the related procedural safeguards begin with your first contact with *Early On* and continue throughout the entire time you are involved. Your rights apply to any paperwork and any time *Early On* interacts with you and your child.

## ***Why Is It Important and How Do We Learn About Our Rights?***

By learning about your rights, you and the *Early On* system can make sure that you are fully informed and involved in every aspect of *Early On*. Knowing your rights will support you in making decisions about your child's participation. Your rights will be explained to you, and you will be given the information in this booklet. You and your service coordinator will review these rights, and you will be able to ask questions.

## ***What Is Covered in This Document?***

This document will explain several of your rights and the related procedural safeguards in place to protect them. These include:

- Early Intervention Records and Confidentiality of Information
- Parental Consent
- Surrogate Parents
- Prior Written Notice
- Problem Solving & Dispute Resolution

Additional rights are discussed in the *Early On* Michigan Family Guidebook provided to families at the time of referral. These rights include, but are not limited to:

- The right to have your child evaluated;
- If eligible for *Early On*, the right to an Individualized Family Service Plan (IFSP) within 45 days of referral;
- The right for services on the IFSP in a timely manner;
- The opportunity to receive each early intervention service in natural environments to the extent appropriate;
- The opportunity to receive evaluation, assessment, IFSP development, service coordination, and procedural safeguards at no cost to your family;
- The right to participate; and
- The right to transition planning and support.

## **Early Intervention Records and Confidentiality of Information**

You have the right to confidentiality of personally identifiable data, information and records collected, maintained, or used by *Early On*. You also have a right to written notice of, and written consent to, the exchange of information among agencies. You have the right to inspect and review all records about your child and family. These rights apply from the time your child is referred until *Early On* no longer maintains your information. There are procedural safeguards in place to ensure these rights to confidentiality and access to records.

### ***What Information Is Collected About My Child and Family?***

An early intervention record is kept for each child participating in *Early On*. Your child's record includes any early intervention information collected about your child and family. Examples include:

- Information from other sources, such as doctors or other agencies and programs;
- Information from your child's evaluation and assessment;
- Information from your family assessment (if you choose to have one);
- Information from your IFSP; and
- Information from any other sources during your time in *Early On*.

Because many participating agencies and programs may provide services to your child and family during your time in *Early On*, other agencies and programs may also keep a record of information about your involvement. All participating agencies must follow the procedural safeguards and comply with the confidentiality procedures regarding records.

### ***What if I Want to See My Child's Early Intervention Record?***

You have the right to see and review any of your child's early intervention record. If any early intervention record includes information on more than one child, you may see and review only the information relating to your child. When you make a request to see your child's record, *Early On* must:

- Provide you with access to the record without unnecessary delay and before any meeting regarding an IFSP or any hearing, and in no case more than ten calendar days after your request;
- Provide you with a list of the types and locations of *Early On* records kept by the agency upon your request;
- Provide you with an explanation or interpretation of the records in response to a reasonable request if you do not understand the records;
- Allow you to have someone you choose to see the records; and
- Allow you to see the record unless the agency has a court order that says you do not have the right to see the record.

*Early On* must make available an initial copy of your child's early intervention record upon your request, at no cost. In addition, a participating agency must provide a copy of: each evaluation, the assessment of the child, the family assessment, and the IFSP, at no cost as soon as possible after each IFSP meeting. Otherwise, participating agencies may charge a fee if the fee doesn't prevent you

from exercising your rights to inspect and review your child's record. They may not charge you a fee to search for or to retrieve information.

### ***What if I Want to Change Something in My Child's Record?***

If you believe that information in your child's record is incorrect, misleading, or violates your privacy or other rights of you or your child, you may ask that the record be changed. If you ask to have your child's record changed, *Early On* must decide whether to change the information according to your request within a reasonable time of receiving the request and either:

- Change the record; or
- Inform you if *Early On* refuses to make the change you requested and that you have a right to a hearing (a formal process used to try and resolve disagreements).

The agency must, upon your request, provide you with the opportunity for a hearing to challenge information in your child's record to ensure that it is not inaccurate, misleading, or otherwise in a violation of the privacy or other rights of you and your child. A hearing to challenge information in your child's record must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA). This hearing must meet, at a minimum, the following requirements:

- The hearing must be held within a reasonable time after *Early On* has received the request for the hearing;
- You must be provided notice of the date, time, and place, reasonably in advance of the hearing;
- The hearing may be conducted by any individual, including an official of *Early On*, who does not have a direct interest in the outcome of the hearing;
- You must be given a full and fair opportunity to present evidence relevant to the issues. You may, at your own expense, be assisted or represented by one or more individuals of your own choice, including an attorney;
- The decision must be in writing within a reasonable period of time after the hearing; and
- The decision must be based solely on evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

If as a result of a hearing the agency determines that a record is:

- Not Accurate, Misleading or a Violation of Rights - *Early On* must change the information in the record and inform you in writing.
- Accurate, Not Misleading and Not a Violation of Rights - *Early On* must inform you of the right to place a statement in your child's record commenting on the information including the reason if you disagree with the decision. This explanation must be kept in your child's record as long as the part you disagree with is kept in the record. If the portion of your child's record that you disagreed with is shared, it must include a copy of your explanation.

### ***Will Early On Share Information from My Child's Record and if So, Why?***

*Early On* might need to share information about your child and family in order to:

- Make referrals for additional supports or services;
- Gather information on your child's health and development from other agencies or programs;
- Help coordinate services across agencies or programs; or

- Transfer information within an agency (from one program to another).

### ***How Will I Know if Early On Has Provided Access to My Child's Record?***

*Early On* must keep a record of when they provide access to your child's record (except access by you, authorized representatives, and employees of the participating agency). The record must show:

- The name of the person;
- The date access was given; and
- The reason access was granted.

### ***Do I Need to Give Permission Before Information Is Shared?***

Sometimes part of your child's record may be shared automatically, while other times your permission may be needed before information is shared.

*Early On* is required to share personally identifiable information for child find purposes for children who are potentially eligible for special education services at age three. This personally identifiable information is shared with the Michigan Department of Education (MDE) and the local school district where the child resides, without parent consent. The personally identifiable information shared for this purpose includes:

- Your child's name and date of birth; and
- Your contact information including names, addresses, and telephone numbers.

Except as noted above, your parental consent is required before personally identifiable information from your child's record is:

- Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under *Early On*.
- Used for any purpose other than meeting the requirements of *Early On*.

Personally identifiable information as defined in FERPA includes, but is not limited to:

- Your child's name;
- Your name and the names of immediate family members;
- Your address;
- A personal identifier, such as a unique identification code (UIC);
- Other indirect identifiers, such as your child's date of birth, place of birth, and mother's maiden name;
- A list of personal characteristics, or other information, that would make your child's/family's identity reasonably certain; and
- Information requested by anyone that *Early On* believes will know the identity of the child to whom the record relates.

### ***How Do I Give Permission to Share Information?***

You give permission to share information by signing an Authorization to Release *Early On* Record form, a Request for Information (Non-Health) Form, or a Request for Protected Information (Health) Form. Your signature on this form means that:

- You have been provided with all the information you need to understand why *Early On* shares information.
- You understand the information you have been given.

- You understand that the information may be shared in writing or verbally.
- You have chosen what information may be shared.
- You have chosen who can receive which pieces of information.

### ***What if I Have Given Permission, But No Longer Want to Have Information Shared?***

If you have given consent to share information, you may change your mind and withdraw your consent at any time without penalty. If you withdraw your consent, that revocation does not apply to an action that occurred before the consent was revoked.

### ***What if I Don't Want Early On to Share Information?***

You do not have to give consent to share information in order to be in *Early On*. If you choose not to share information, you will still sign a form to make sure this choice is clear. It is important to know that if you decide not to allow *Early On* to share information, it may limit the ways in which *Early On* can help your family.

### ***What Happens to My Child's Record and Personally Identifiable Information When Early On Ends?***

*Early On* might end because your child has turned three, your family no longer needs or wants services, your child no longer has a delay that makes him/her eligible, or for other reasons. When *Early On* ends for your child and family, your child's record is kept by *Early On* for a minimum of seven years and until all of the following are met:

- services have ended;
- documentation is no longer needed to show federal funds were properly spent;
- all monitoring activities have been concluded; and
- no request to inspect and review the record remains.

The destruction of your child's record may then take place.

You may request that your child's personally identifiable information be destroyed. However, please note that a unique identification code was created when your child entered *Early On* and some information may be kept indefinitely. At a minimum the information kept in this data system can include your child's name, date of birth, your contact information, early intervention service provider, and exit data (including year and age upon exit and any programs entered into upon exiting).

## **Parental Consent**

### ***What Does Consent Mean?***

Consent means that you agree and give permission for an activity or action. Your *Early On* team must get permission in writing (your signature). An important part of giving your written consent means that *Early On* has your permission and that you are fully informed before providing your signature. Fully informed means you understand what will happen. You understand the benefits, responsibilities, and any consequences so you can make a choice about participating.

*Early On* will explain things to you in your native language. Native language means the language you usually speak or the way you usually communicate. Any

document you sign will also describe the agreed upon activity and list the early intervention records (if any) that will be released and to whom they will be released. *Early On* will explain this information in your native language, unless it is clearly not feasible for *Early On* to do so. An instance where this may not be feasible would be if an interpreter for a particular language cannot be located, despite best efforts. Native language could include communications such as sign language, braille, or oral.

### ***Who Can Give Consent?***

Consent for *Early On* activities can be given by a parent, an adoptive parent, a guardian, or a person acting as the parent when the parent cannot be identified or located, or when the parent's rights have been terminated. In the case that no adult in the child's life meets the definition of parent, a surrogate parent may need to be assigned.

Biological parents who have not had their rights terminated, even though their child may be in a foster care placement, are the appropriate providers of consent for all activities related to *Early On*.

### ***What Is the Definition of Parent Used by Early On?***

Parent means:

- A biological or adoptive parent of a child;
- A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the State if the child is a ward of the State);
- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- A surrogate parent who has been appointed.

The biological or adoptive parent must be presumed to be the parent when they are attempting to act as the parent under *Early On* when there is more than one party qualified, 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 to act as the "parent" of a child or to make educational or early intervention service decisions on behalf of a child, then the person or person must be determined to be the "parent" for the purposes of *Early On*. An exception to this is if the early intervention service provider or public agency provides any services to a child or any family member of that child, that early intervention service provider or public agency may not act as the parent of the child.



### ***How Do I Give Consent?***

You give consent by signing a form. Your signature on the form means that:

- You have been provided with all the information you need to understand the activity;
- You understand the information you have been given;
- You understand that giving your permission is voluntary; and
- You may change your mind and withdraw your permission at any time. If you withdraw your permission, that revocation does not apply to an action that occurred before the consent was revoked.

### ***When Do I Give Consent?***

*Early On* must have your written consent (signature) before any of the following activities may occur:

- **Screening:** Written consent is required before *Early On* can screen your child to determine whether your child is suspected of having a disability.
- **Evaluation:** Written consent is required before an evaluation. Evaluation is a process used to learn if a child is eligible for *Early On*. If you choose not to give consent for an evaluation to take place, *Early On* is not able to see if your child is eligible for supports or services. Consent is also needed for any additional evaluations. Further evaluation may be needed, if additional concerns are identified or to determine if your child continues to be eligible for *Early On*.
- **Assessment:** With your written consent, assessments will be completed to identify your child's unique strengths and needs, and the early intervention services appropriate to meet those needs throughout the period of your child's eligibility.
- **Early Intervention Services:** An IFSP is your written plan that describes what supports and services (information and help) you, your family members and your child will receive. You will indicate your consent in writing. You may decide which of the recommended supports and services you want to accept or decline. If you choose not to consent to some supports and services, you will still receive the others that you do want. You may decline a service after accepting it without jeopardizing other early intervention services.
- **Use of Public Benefits or Insurance:** Prior to billing Medicaid or any other public benefit for any of your *Early On* services, *Early On* must obtain your written consent.
- **Release of Personally Identifiable Information:** See the section of this document titled Early Intervention Records and Confidentiality of Information for more details about when your consent is needed for sharing personally identifiable information.

### ***What if I Decide Not to Give My Consent?***

If you choose not to 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, assessment, or early intervention services unless written consent is given.

*Early On* may not use the due process hearing to challenge your refusal to provide consent.

### ***What if I Don't Understand Why I Am Asked to Give Consent?***

If you do not understand why you are being asked to give consent or what you are agreeing to, ask your service coordinator to give you more information or answer your questions before you sign any forms.

## **Surrogate Parents**

### ***When Would a Surrogate Parent Be Assigned?***

*Early On* must ensure that the rights of the child are protected when no parent (as defined in the section of this document called Parental Consent) can be identified, after reasonable efforts a parent cannot be located, or if the child is a ward of the State. In these cases, a person will be assigned to act as a surrogate for the parent. This assignment process includes:

- Determination of whether a child needs a surrogate parent;
- Assignment of a surrogate parent to the child; and
- Consultation with the public agency that has been assigned care of the child, if the child is a ward of the State or placed in foster care.

In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by *Early On*, may be appointed by the judge overseeing the infant or toddler's case.

### ***How Are Surrogate Parents Selected?***

*Early On* or another public agency may select a surrogate parent in a way permitted by State law. The agency must ensure that a person selected as a surrogate parent:

- Is not an employee of MDE, the local lead agency or any other public agency or early intervention services 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.

A person who is otherwise qualified to be a surrogate parent (as listed above) is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

*Early On* must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 calendar days after determining that the child needs a surrogate parent. Once assigned, the surrogate parent has the same rights as a parent for the purposes of *Early On*.

## Prior Written Notice

### ***When Does Early On Need to Provide Prior Written Notice to My Family?***

*Early On* must tell you in writing a reasonable time before proposing or refusing to initiate or change the identification, evaluation, placement of your child or provision of services to your child and family. Steps must be taken to ensure you understand the notice.

### ***What Information Must Be Included in the Notice?***

The written notice must have enough information to inform you about:

- The action being proposed or refused;
- The reasons for the action; and
- All procedural safeguards including those related to mediation, how to file a State complaint, due process, and timelines related to each of these procedures.

These notices must be written in a language understandable to the general public, and also provided in your native language, or other mode of communication (such as sign language, Braille, or oral communication) used by you, unless it is clearly not feasible to do so.

If your native language or mode of communication is not a written language, the service provider will take steps to ensure that:

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

## Problem Solving & Dispute Resolution

When people work together, sometimes they don't agree. For example, you might disagree about:

- A decision about whether or not your child is eligible to receive services;
- Types of supports and services;
- Location or frequency of supports and services;
- Method of providing supports or services; or
- Other aspects of early intervention for your child or family.

### ***What Happens if I Disagree with Early On?***

There are several ways to problem solve if you disagree:

- A first step may be to resolve the disagreement informally with your service coordinator or with your local *Early On* Coordinator (your *Early On* Coordinator is the person in charge of *Early On* in a local county or counties).
- Holding an IFSP meeting may provide an opportunity for you and your child's providers to discuss and possibly resolve the disagreement.
- An additional option would be holding a facilitated IFSP meeting for which an outside facilitator can be obtained at no charge through Special Education Mediation Services (SEMS). The use of a facilitator is voluntary and must be agreed to by both parties.

- At any time or if none of the above suggestions work, you may wish to move to formal dispute resolution process, which may include mediation, State complaint, due process complaint, or due process hearing.

MDE has established procedures to make mediation available to allow you and *Early On* to resolve disagreements involving any matter under Part C of the IDEA, including matters arising prior to the filing of a State complaint or a due process complaint. Thus, mediation is available to resolve disputes whether or not you have filed a due process complaint.

There are separate procedures for State complaints and for due process complaints and hearings. Any individual or organization may file a State complaint alleging a violation of any Part C requirement by a school district, MDE, or any other public agency. Only you, an early intervention services provider, or MDE may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability.

### **Mediation:**

#### **How Does Mediation Work?**

Mediation helps parents and professionals resolve disagreements through a cooperative discussion. Mediation is voluntary and there is no cost to you. Each session must be scheduled in a timely manner and held in a location that is convenient to those involved in the dispute. Successful mediation results in a written, legally binding agreement that is both agreed upon and signed by both parties. A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that happen during the mediation process are confidential and may not be used as evidence in any due process hearing or civil proceedings. Mediation is not used to deny or delay your right to a due process hearing or to deny any other rights.

#### **Who Can Serve as a Mediator?**

The mediator is a qualified and impartial person who is trained in effective mediation techniques that can help you discuss your disagreement and come to an agreement. An individual who serves as a mediator:

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

A person who otherwise qualifies as a mediator is not an employee of MDE or an early intervention service provider solely because he or she is paid by MDE or provider to serve as a mediator.

MDE maintains a list of people who are qualified mediators and know the laws and regulations relating to the provision of early intervention services. MDE selects mediators on a random, rotational, or other impartial basis. A mediator will be selected for you if you decide to start the mediation process.

### ***How Can I Learn More About or Start the Mediation Process?***

For more information or to directly access mediation services in your county, contact Special Education Mediation Services (SEMS) at 833-KIDS1ST (833-543-7178). Your service coordinator can assist you with this call if you wish. Visit them on the web at: <http://MiKids1st.org>.

### ***State Complaint:***

#### ***What Happens if I Think Our Rights Have Been Violated?***

The State complaint is a signed, written complaint which contains a description of the claim that *Early On* has violated state and/or federal regulations that guide *Early On*. There is no cost to you as a parent to file a State complaint. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by MDE.

#### ***What Information Must Be Included if We Choose to File a State Complaint?***

If you choose to file a State complaint, your complaint must contain information that includes:

- A statement that the agency has violated a requirement of the law;
- Facts to support the complaint;
- The signature and contact information for the person filing the complaint; and
- If the violation involves a specific child; the name and address of the child, the name of the service provider of the child, a description of the nature of the problem of the child relating to the proposed or refused initiation or change (including facts relating to the problem), and a proposed resolution to the problem to the extent known and available to the party at the time that the complaint is received.

The person filing the complaint must send a copy of the complaint to the public agency or early intervention service provider serving the child at the same time the complaint is filed with MDE. MDE has developed a form to help you file a State complaint. The model form is available at [www.1800earlyon.org/family](http://www.1800earlyon.org/family). You are not required to use this form; however, the State complaint must contain the information required for filing a State complaint listed above.

#### ***How Does the State Complaint Investigation Work?***

Once your State complaint has been filed, procedures will include:

- MDE collaboration with the assigned Intermediate School District (ISD) investigator to investigate the allegations in the complaint by fact finding, conducting interviews, and reviewing child records, correspondence, and other information. OSE may conduct an investigation independent of the ISD;
- An opportunity for you to submit additional information, either orally or in writing;
- An opportunity for the local lead agency, public agency or early intervention service provider to respond to the complaint, including a proposal to resolve the complaint (at the discretion of the local lead agency) and an option for both parties to voluntarily engage in mediation;

- A review of all information and an independent determination regarding the violation;
- A written decision will be issued within 60 calendar days of receiving the complaint, unless the timeline is extended based on exceptional circumstances or if there is an agreement to extend time to allow for mediation. This decision will include finding of fact, conclusions, and the reason for the final decision; and
- A copy of the transcription and facts and finding will be provided to you at no cost.

If a written complaint is also part of due process hearing or it has an issue or issues that are part of a hearing, the part of the complaint addressed in the due process hearing will be set aside until after the hearing. However, any part of the complaint not part of a hearing will be addressed within the 60-calendar day timeline (unless there are exceptions to the timeline).

If any issue in the complaint has already been decided in a due process hearing, the MDE must inform you that the due process hearing decision is binding and cannot be changed within the State complaint process.

### ***How Will My Complaint Be Resolved if It Is Determined That My Child Wasn't Provided Appropriate Services?***

In resolving a complaint in which MDE has found a failure to provide appropriate services, MDE must address:

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

### ***Due Process Complaint:***

#### ***Who can file a Due Process Complaint?***

A due process complaint can be filed by a parent, early intervention services provider, local lead agency, or MDE.

#### ***What is a Due Process Complaint?***

A due process complaint may be filed on any matter relating to *Early On* proposing or refusing to initiate or change any action regarding your child's:

- Identification
- Evaluation
- Placement
- Provision of appropriate *Early On* services

The due process complaint must allege a violation occurred not more than two years before the date you, the early intervention provider, or local lead agency knew, or should have known, about the alleged action addressed in the complaint unless there is an exception. Exceptions to the timeline are allowed if you were prevented from filing a due process complaint due to misrepresentation that the issue had been resolved or you were not provided required information.

### ***What if I Need Legal Advice or Assistance With the Complaint Process?***

MDE will inform you about free or low-cost legal and other relevant services available in your area if you request the information or if you or the early intervention service provider files a due process complaint.

### ***What Are the Requirements for Filing a Due Process Complaint?***

The parent, early intervention services provider, local lead agency or MDE (or the attorney representing that party) must provide the other party a due process complaint. A copy of the due process complaint must also be forwarded to MDE. This complaint will remain confidential and must include the following information:

- Name of the child;
- The address of residence of the child;
- The name of the early intervention service provider serving the child;
- In the case of a child who is homeless, available contact information for the child and the name of the early intervention service provider;
- A description of the nature of the problem of the child regarding the proposed or refused initiation or change, including facts relating to the problem;
- Your proposed resolution of the problem to the extent known and available to you; and
- The Statement of Delivery as stated below.

### ***What Is a Statement of Delivery?***

The due process complaint delivered to MDE and other party must include a Statement of Delivery describing how the complaint was delivered to the other party including:

- If by mail, the person the complaint was addressed to and the date it was mailed.
- If by fax, the person the complaint was addressed to and the date and time it was sent.
- If in person, the date and place the complaint was delivered and the person to whom it was given.

### ***Are There Specific Forms I Need to Use When Filing a Due Process Complaint?***

MDE has developed a form to help you file a due process complaint. You are not required to use this form; however, the due process complaint must contain the required information. Your service coordinator may assist you in filing your complaint if you wish. A link to the Early Intervention (*Early On*<sup>®</sup>) Due Process Complaint Procedures is available at: [www.1800earlyon.org/family](http://www.1800earlyon.org/family).



### ***How Will I Know Whether My Due Process Complaint Meets the Filing Requirements?***

In order for a due process complaint to go forward, it must be considered sufficient (to have met the content requirements listed above). The due process complaint will be considered sufficient unless the party receiving the due process complaint notifies the administrative law judge 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.

Within five calendar days after receiving this written notification from the receiving party that the complaint is insufficient, the hearing officer must determine whether the due process complaint meets the requirements and notify all parties of that decision in writing.

### ***Can We Amend Our Due Process Complaint?***

- A party may amend the due process complaint only if the other party consents in writing to the change and they are given the opportunity to resolve the due process through a resolution meeting or the hearing officer grants permission to amend at any time not later than five days before the due process hearing begins.
- If a party files an amended due process complaint, the timeline for the resolution meeting (within 15 calendar days) and the time period for resolution before moving to a hearing (within 30 calendar days) starts again with the filing of the amended due process complaint.

### ***What Happens After a Due Process Complaint Has Been Filed?***

Once a due process complaint has been filed:

- If you have not received a prior written notice regarding the problem in the due process complaint, the local lead agency or early intervention services provider must, within ten calendar days of receiving the due process complaint, send a response to you that includes:
  - An explanation of why the action was proposed or refused;
  - A description of other options the IFSP Team considered and the reason why those options were rejected;
  - A description of each evaluation procedure, assessment, record, or report used as a basis for the proposed or refused action; and
  - A description of the other factors relevant to the proposed or refused action.

Providing the information in items above does not prevent MDE from asserting that your due process complaint was insufficient.

- The party receiving the due process complaint must send a response that specifically addresses the issues in the complaint within ten calendar days.
- You will be provided an opportunity to resolve the dispute through a resolution meeting.

### ***What Is a Resolution Meeting?***

The local lead agency must convene a meeting with you and the relevant member or members of the IFSP Team who have specific knowledge of the facts identified on the due process complaint. You and the local lead agency will determine the relevant members of the IFSP Team who will attend the meeting. The meeting:



- Must include a representative of the local lead agency who has decision-making authority on behalf of the agency; and
- May not include an attorney of the local lead agency unless the parent is accompanied by an attorney.

The purpose of the meeting is to discuss your due process complaint, and the facts that form the basis of the complaint, so that the local lead agency has the opportunity to resolve the dispute.

### ***When Does a Resolution Meeting Take Place?***

A resolution meeting must be convened within 15 calendar days after the due process complaint is filed. A due process hearing cannot begin until a resolution meeting is conducted. The resolution meeting is not required if:

- You and the local lead agency agree in writing to waive the meeting; or
- You and the local lead agency agree to use the mediation process.

### ***What Happens if We Resolve the Dispute at the Resolution Meeting?***

If a resolution to the dispute is reached at the resolution meeting, you and the local lead agency must enter into a legally binding agreement that:

- Is signed by you and a representative of the local lead agency who has the authority to bind the participating agency, and
- Is enforceable in any 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.
- May be voided within three business days of the time that both you and the local lead agency signed the agreement.

### ***What Happens if We Can't Come to an Agreement?***

If the local lead agency 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.

### ***By When Must a Final Decision Be Made About the Complaint?***

A 45-calendar day timeline for completion of the due process hearing and a final decision starts the day after any of the following events take place:

- Expiration of the 30-calendar day resolution period with no agreement;
- If you and the local lead agency agree in writing to waive the resolution meeting;
- After either the mediation or resolution meeting starts but before the end of the 30-calendar day period, if you and the local lead agency agree in writing that no agreement is possible; or
- If you and the local lead agency agree in writing to continue the mediation at the end of the 30-calendar day period, but later, you or the local lead agency withdraw from the mediation process.

### ***What Happens if I Do Not Participate In the Resolution Meeting?***

Except where you and the local lead agency have jointly 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 the meeting is held.

If after making reasonable efforts and documenting such efforts, the local lead agency is not able to obtain your participation in the resolution meeting, the local lead agency may, at the end of the 30-calendar day resolution period, request that an administrative law judge dismiss your due process complaint. Documentation of such efforts must include a record of the attempts to arrange a mutually agreed upon time and place.

### ***What if the Participating Agency Does Not Convene or Fails to Participate In the Meeting?***

If the participating agency 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 an administrative law judge to order that the 45-calendar day due process hearing timeline begin.

### ***Will My Child Receive Services While the Dispute Is Being Resolved?***

While you are waiting for the due process complaint to be resolved, unless you and MDE otherwise agree, your child must continue to receive the appropriate early intervention services in the setting that you consented to on the IFSP. If your complaint is filed concerning an initial IFSP, all services on that IFSP which are not disputed must be provided.

### ***Due Process Hearing:***

Whenever a due process complaint is filed, you or the early intervention service provider involved in the dispute must have an opportunity for an impartial due process hearing, after following the procedures described in the due process complaint section.

### ***Who Will Be the Hearing Officer?***

In Michigan, due process hearings are conducted by administrative law judges. At a minimum, an administrative law judge:

- Must not be an employee of MDE or the early intervention service provider involved in the early intervention services or care of the infant or toddler;
- Must not have personal or professional interest that conflicts with the person's objectivity in the hearing;
- Must be knowledgeable and understand the provision of IDEA, federal and state regulations, and legal interpretations of the Act by federal and state courts; and
- Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

Administrative law judges are State classified civil service employees who are attorneys. MDE keeps a list that includes a statement of the qualifications of those persons who serve as administrative law judges.

### ***What Can Be Discussed at the Due Process Hearing?***

Only issues raised in the due process complaint may be discussed at a due process hearing. The party (you or the early intervention services provider) that requests the due process hearing may not raise issues at the hearing that were not addressed in the due process complaint, unless the other party agrees. Nothing in this section affects the right of a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

### ***What Is the Timeline for Requesting a Hearing?***

An impartial hearing on the due process complaint must be requested within two years of the date you, the local lead agency, or the early intervention service provider knew or should have known about the issue(s) addressed in the complaint. The above timeline does not apply to you if you could not file a due process complaint because the local lead agency or early intervention provider:

- Misrepresented that it had resolved the problem or issue you are raising in your complaint; or
- Withheld information from you that it was required to provide to you.

### ***What Are My Rights Regarding a Due Process Hearing?***

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

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

In addition, parents involved in hearings must:

- Be given the right to open the hearing to the public; and
- Receive a copy of the record of the hearing and the findings of fact and decisions at no cost.

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

### ***Can Additional Evaluation Information Be Used at a Due Process Hearing?***

At least five business days prior to a due process hearing each party must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that are going to be used at the hearing. An administrative law judge 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.

### ***On What Information Will the Administrative Law Judge Base Their Decision?***

An administrative law judge's decision of whether your child was appropriately identified, evaluated, or placed, or whether your child or family were appropriately provided early intervention services must be based on substantive grounds.

In matters alleging a procedural violation, an administrative law judge may find that your child was not appropriately identified, evaluated, placed, or provided early intervention services only if the procedural inadequacies:

- Impeded your child's right to identification, evaluation, and placement or provision of early intervention services for your child or your family;
- Significantly impeded your opportunity to participate in the decision-making process regarding identification, evaluation, placement, or provision of early intervention services for your child and family; or
- Caused a deprivation of educational or developmental benefits.

### ***When and How Will I Know the Results of the Hearing?***

MDE must ensure that not later than 45 calendar days after the expiration of the 30-calendar day period or the adjusted time period (if the 30-calendar day is adjusted as described in the due process complaint section):

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

An administrative law judge may grant specific extensions of time beyond the 45-calendar day time line as described above at the request of either party.

A decision made in a due process hearing is final, except that any party involved in the hearing may appeal the decision by bringing a civil action.

### ***Are the Results from Due Process Hearings Released to the Public?***

MDE, after removing personally identifiable information, must make the findings and decision available to the public.

### ***What if We Disagree with the Results of the Due Process Hearing?***

Any party who does not agree with the findings and 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. A civil action is a lawsuit filed in state or federal court. 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. An attorney can advise you about how to do this.

The party bringing the action shall have 90 calendar days from the date of the decision of the administrative law judge to file a civil action.

In any civil action, the court:

- Receives the records of the administrative proceedings;
- Hears additional evidence at the request of a party; and
- Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate

### ***Are There Other Laws Which Might Apply to My Complaint?***

Nothing in IDEA restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other federal laws protecting the right of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under 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 IDEA. This means that you may have remedies available under other laws that overlap with those available under 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.

### ***What if the Due Process Hearing Decision Fails to be Implemented?***

A state complaint can be filed and will be resolved by MDE if there has been a failure to implement a due process hearing decision.

## **Remember**

Procedural safeguards are in place to protect you and your family and to ensure that your Early On involvement is rewarding for your family. If at any point throughout your Early On involvement you have questions, please don't hesitate to contact your service coordinator and ask for more information. Your service coordinator wants your participation in Early On to be successful and will work with you to make sure you feel confident about the decisions you're asked to make.

## **Glossary**

***Authorization to Release Early On Record Form:*** A form that provides permission for *Early On* to release information from a child's record to another agency. The form must tell who can share what and with whom. Information, except as otherwise noted in this document, cannot be shared until the form is signed by a parent.

***Civil Action:*** A lawsuit filed in state or federal court.

***Confidentiality:*** The act of maintaining privacy.

***Consent:*** Obtaining a parent's permission in writing (i.e., signature) before *Early On* starts any activity that affects a child and family, or before *Early On* shares information about a family or child. For more details about consent, see the section of this document titled Parental Consent.

***Dispute Resolution:*** A process for resolving disagreements.

***Destruction:*** Destruction 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.

***Due Process Complaint:*** A due process complaint is a written statement alleging a violation on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of your child. Further details are found in the section on Problem Solving and Dispute Resolution in this document.

***Due Process Hearing:*** A formal process used to try to resolve disagreements. The hearing is conducted with a neutral person, the Hearing Officer, who listens to the evidence and arguments of the parents and the agencies and decides who is right and who must do what. Further details are found in the section on Problem Solving and Dispute Resolution in this document.

***Early Intervention Record:*** All records regarding a child that are required to be collected, maintained, or used under IDEA Part C.

***Early Intervention Service Provider:*** An entity or individual that provides early intervention services under Part C of IDEA, whether or not the entity or individual receives federal funds under Part C of IDEA.

***Early Intervention Services:*** Services provided, at no cost, by *Early On* which are selected together with the parents. These services are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the child's development.

***Early On:*** Michigan's system of early intervention. It is not intended to be one single "program," but rather a collection of supports, services, and resources provided by many programs.

***Early On Coordinator:*** A person in charge of *Early On* in a local county or counties.

***Eligible:*** When a child qualifies to receive supports and services from *Early On*.

***Evaluation:*** A process to learn about a child's growth and development. It is also a testing tool and process used to find out if a child is eligible for *Early On*.

***Family:*** A group of people close to you and your child. It may include, but is not limited to, parents, husband or wife, grandparents, in-laws, aunts and uncles, brothers or sisters, legal guardians, or friends.

***Family Educational Rights and Privacy Act (FERPA):*** A federal law protecting personally identifiable information that is held in a child's early intervention record.

***Fully Informed:*** Having all of the information so that potential benefits, responsibilities, and consequences can be considered before making a decision.

***Individualized Family Service Plan (IFSP):*** A written plan based upon evaluations and assessments including outcomes/goals expected for the child to grow, develop and fully participate in daily and community activities. It also documents what services and/or supports the child and family will receive while in *Early On*.

***Individuals with Disabilities Education Act (IDEA):*** The federal law that guides the education of infants, toddlers, children, and youth with disabilities. Part C of the



IDEA is the part of the law that pertains to early intervention services for children birth to three, known in Michigan as *Early On*.

**Mediation:** An informal process with a neutral person, the mediator, who meets with the parents and the agencies to see if they can come to an agreement about resolving their dispute.

**Mediator:** A trained, impartial person who facilitates problem solving.

**Michigan Department of Education (MDE):** The State agency designated by the Governor as the lead agency for Part C of IDEA which therefore oversees *Early On* in Michigan.

**Native Language:** The language or mode of communication typically used by a family or in the case of evaluations and assessments may be in the language of the child.

**Parent:** A person responsible for the care and well-being of a child. It could include birth parents, adoptive parents, single parents, guardians, grandparents, foster parents. See an expanded definition in the section of parental consent of this document.

**Participating Agency:** Any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement *Early On*. A participating agency includes MDE and early intervention providers and any individual or entity that provides any Part C services. This does not include primary referral source or public/private agencies acting solely as funding sources for *Early On* (such as state Medicaid or MiChild, or private insurance companies).

**Personally Identifiable Information:** Information includes, but is not limited to: your child's name; your name and the names of immediate family members; your address; a personal identifier, such as a unique identification code (UIC); other indirect identifiers, such as the child's date of birth, place of birth, and mother's maiden name; a list of personal characteristics, or other information, that would make your child's/family's identity reasonably certain; and information requested by anyone that *Early On* believes will know the identity of the child to whom the record relates. For more information, see the section Early Intervention Records and Confidentiality of Information for more details.

**Prior Written Notice:** Written information given to the parent(s) to inform them ahead of time about a proposed action or change.

**Procedural Safeguards:** Checks and balances that are built into the *Early On* system to assure that the *Early On* process happens as it is supposed to for children and families. They are the legal safeguards that protect what a family is entitled to under Part C of IDEA.

**Record:** See *Early Intervention Record*.

**Referral:** A recommendation to have a child evaluated for *Early On*. The referral starts the *Early On* process. It occurs because of a concern about a child's development or health issue.

**Request for Protected Information (Health) Form:** This form is to be used when requesting Specific HIPAA Protected Health Information (PHI) or Personally Identifiable Information (PII) from a health department, doctor, hospital, mental health facility, or other health care provider.

**Request for Information (Non-Health) Form:** This form is to be used when requesting information from child care centers or other community agencies.

**Screening:** A brief process used to identify children who are suspected of having a disability.

**Service Coordinator:** The family's main contact in the *Early On* process. This person supports and assists the family the entire time they are in *Early On*.

**Services:** See Early Intervention Services.

**Special Education Mediation Services (SEMS):** A State mandated activities project that helps parents, educators, and service providers develop productive relationships for resolving issues in early intervention and special education.

**Surrogate Parent:** A surrogate parent is a person who is appointed to represent the rights of a child eligible for *Early On* when none of the legal definitions for a parent apply. More detail is available in the section titled Surrogate Parents.

**State Complaint:** A written statement alleging that a violation of an *Early On* requirement has occurred. For more information see the section titled Problem Solving and Dispute Resolution.

**Unique Identification Code:** A ten-digit number assigned to an individual to allow federal and state tracking of the individual's progress through the education system without having to know the name or the other personally identifiable information.