

# BABYNET NOTICE OF FAMILY RIGHTS AND SAFEGUARDS



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

The following describes and serves as notice on each of the specific procedural safeguards you are entitled to under IDEA. Terms and abbreviations used in this document are defined below.

<b>BabyNet</b>	South Carolina's Early Intervention System under Part C of the Individuals with Disabilities Education Act
<b>34 CFR 303</b>	Code of Federal Regulations for Part C of IDEA
<b>IDEA</b>	Individuals with Disabilities Education Act of 2004, Public Law 108-446. Part C of IDEA establishes federal authority for each state's early intervention system.
<b>SCDHHS</b>	South Carolina Department of Health and Human Services, designated by the Governor as the State Lead Agency for the BabyNet System

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## GENERAL RESPONSIBILITIES OF THE STATE LEAD AGENCY 34 CFR § 303.400

The general responsibilities of SCDHHS for procedural safeguards for the BabyNet early intervention system are to:

- Adopt procedural safeguards that meet federal requirements, including the provisions on confidentiality in 34 CFR §§303.401 through 303.417, parental consent and notice in 34 CFR §§303.420 and 303.421, surrogate parents in 34 CFR §303.422, and dispute resolution procedures in 34 CFR §303.430;
- Ensure the effective implementation of the safeguards by SCDHHS, Service Coordination agencies, and Early Intervention Service (EIS) providers for all referred and eligible families and children; and
- Provide you with an initial copy of your child's early intervention record at no cost.

## CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION AND EARLY INTERVENTION RECORDS 34 CFR §§303.401 – 303.417

### 34 CFR §303.401 Confidentiality and opportunity to examine records.

- General.* SCDHHS, Service Coordination agencies, and EIS providers must ensure that from the time of referral to BabyNet, you and your child are afforded the right to confidentiality of personally identifiable information (including the right to written notice of and written consent to the exchange of information among agencies in a manner consistent with Federal and State laws.)
- Confidentiality procedures.* SCDHHS must ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by SCDHHS, Service Coordination agencies, and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA, 34 CFR §99). SCDHHS must have procedures in effect to ensure that -
  - SCDHHS, Service Coordination agencies, and EIS providers comply with IDEA confidentiality procedures in 34 CFR §§303.401 through 303.417; and
  - You have the opportunity to inspect and review all BabyNet information about you and your child that are collected, maintained, or used, including records related to evaluations and assessments, screening, eligibility determinations, development, and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record.
- Applicability and timeframe of procedures.* The confidentiality procedures apply to the personally identifiable information about you and your child that -

(1) Is contained in early intervention records collected, used, or maintained by SCDHHS, Service Coordination agencies, and EIS providers; and

(2) Applies from the point in time when your child is referred for early intervention services until SCDHHS, Service Coordination agencies, or Early Intervention Service (EIS) providers are no longer required to maintain or no longer maintains that information under applicable Federal and State laws.

(d) *Disclosure of information.*

(1) SCDHHS must disclose to the S.C. Department of Education (State Education Agency, or SEA) and your child's school district (Local Education Agency, or LEA), in accordance with 34 CFR §303.209(b)(1)(i) and (b)(1)(ii), the following personally identifiable information:

(i) Your child's name.

(ii) Your child's date of birth.

(iii) Your contact information (including your name, address, and telephone number(s)).

(2) The information described above is needed to enable SCDHHS, as well as LEAs and SEAs under Part B of IDEA to meet the Federal and State requirements for transition at age three (3).

### **34 CFR §303.402 Confidentiality of records.**

The regulations in 34 CFR §§303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by SCDHHS, Service Coordination agencies, and EIS providers, also meet the requirements of the FERPA as found in 34 CFR §99.

### **34 CFR §§303.29, 303.403; 34 CRF §99 Definitions related to records.**

(a) *Destruction of records* means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable.

(b) *Early intervention records* mean all records regarding a child that are required to be collected, maintained, or used under IDEA and its implementing regulations.

(c) *Personally Identifiable Information (PII)* is information that includes but is not limited to: (1) the name of your child, your name, or the name of other family members; (2) the address of your child; (3) indirect identifiers, such as the child's date of birth, place of birth, and mother's maiden name; (4) other information that, alone or in combination, is linked or linkable to a specific child that would allow a reasonable person in the early intervention system who does not have personal knowledge of the relevant circumstance, to identify the child with reasonable certainty; or (5) information requested by a person who SCDHHS reasonably believes knows the identity of the child to whom the early intervention record relates.

(d) *Participating agency* means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements of IDEA and the regulations in 34 CRF §303 with respect to you or your child. Participating agencies include SCDHHS, all Service Coordination agencies, and all public or private EIS providers of BabyNet (including provision of evaluations and assessments, and other Part C services), but does not include primary referral sources, or public agencies (such as the State Medicaid or CHIP program) or private entities that act solely as funding sources for IDEA services.

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

### **34 CFR § 303.404 Notice to parents regarding confidentiality and records.**

SCDHHS must give you notice of the confidentiality regulations when your child is referred to BabyNet. That notice must have sufficient detail to fully inform you about the requirements of confidentiality in 34 CFR §303.402, and include:

(a) A description of the types of children on whom personally identifiable information is maintained, the types of information sought, the methods South Carolina intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

- (b) 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;
- (c) A description of all the rights of you and your child regarding this information, including your rights under IDEA confidentiality provisions; and
- (d) A description of the extent that the notice is provided in the native languages of the various population groups in South Carolina.

#### **34 CFR §303.405 Access rights for records.**

- (a) Each Service Coordination agency and EIS provider must permit you to inspect and review any early intervention records relating to your child children that are collected, maintained, or used by the Service Coordinator or EIS provider. The Service Coordinator or EIS provider must comply with your request to inspect and review records without unnecessary delay, before any meeting regarding an IFSP, or before any hearing relating to identification, evaluation, or placement or the provision of appropriate early intervention services to your child as describe in 34 CFR §303.430(d) and §§303.435 through 303.439. Such records will be made available to you no later than ten (10) calendar days after the request has been made.
- (b) The right to inspect and review early intervention records includes:
  - (1) The right to a response from the Service Coordinator or EIS provider to reasonable requests for explanations and interpretations of the early intervention records;
  - (2) The right to request that the Service Coordinator or EIS provider provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent you from exercising the right to inspect and review the records; and
  - (3) The right to have a representative of your choosing inspect and review the early intervention records.
- (c) Service Coordinators and EIS providers may presume that you have authority to inspect and review records relating to your child unless SCDHHS has been provided documentation that you do not have the authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce.

#### **34 CFR §303.406 Record of access to confidential information.**

Service Coordination agencies and EIS providers must keep a record of parties obtaining access to early intervention records collected, maintained, or used BabyNet (except when the record is accessed by you, or authorized representatives and employees SCDHHS, Service Coordinators or EIS providers), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.

#### **34 CFR §303.407 Records on more than one child.**

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

#### **34 CFR §303.408 List of types and locations of information.**

SCDHHS, Service Coordinators and EIS providers must provide you, on request, a list of the types and locations of early intervention records collected, maintained, or used by BabyNet.

#### **34 CFR §303.409 Fees for records.**

- (a) Service Coordinators and EIS providers may charge a fee for copies of records that are made for you if the fee does not effectively prevent you from exercising your right to inspect and review those records. You may **not** be charged a fee by Service Coordinators or EIS providers for:
  - (b) Search for or retrieval of information.
  - (c) A copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.

#### **34 CFR §303.410 Amendment of records at a parent's request.**

- (a) If you believe that information in early intervention records collected, maintained, or used by BabyNet is inaccurate, misleading, or violates the privacy or other rights of you or your child, you may request the Service Coordination

agency and EIS provider that maintains the information to amend the information.

(b) The Service Coordinator or EIS provider must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the Service Coordinator or EIS provider refuses to amend the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing under 34 CFR §303.411.

### **34 CFR §303.411 Opportunity for a hearing regarding records.**

SCDHHS, on request, must provide you an opportunity for a hearing to challenge information in your child's early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child or you. You may request a due process hearing under the procedures in 34 CFR §303.430(d)(1), provided that such hearing procedures meet the requirements of the hearing procedures in 34 CFR §303.413 or you may request a hearing directly under the State's procedures in 34 CFR §303.413 (that is, procedures that are consistent with the FERPA hearing requirements in 34 CFR §99.22).

### **34 CFR §303.412 Result of hearing regarding records.**

(a) If, as a result of the hearing, SCDHHS decides that the information is inaccurate, misleading or in violation of the privacy or other rights of you or your child, your records must be amended accordingly, and you will be notified of the amendment in writing.

(b) If, as a result of the hearing, SCDHHS decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child or you, you will be informed of your right to place a statement in your child's early intervention record commenting on the information and providing any reasons for disagreeing with the decision.

(c) Any explanation placed in the early intervention records of the child under this section must -

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

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

### **34 CFR §303.413 Hearing procedures for records.**

A hearing held under 34 CFR §303.411 must be conducted according to the procedures under FERPA in 34 CFR §99.22.

### **34 CFR §303.414 Consent prior to disclosure or use of records.**

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

(1) Disclosed to parties, other than officials of participating agencies and individuals described above, unless the information is contained in early intervention records, and the disclosure is authorized without parental consent under 34 CFR Part 99; or

(2) Used for any purpose other than meeting a requirement IDEA.

(b) SCDHHS, Service Coordination agencies, or EIS providers may not disclose personally identifiable information, as defined in 34 CFR §303.29, to any party except Service Coordination agencies or EIS providers that are part BabyNet without parental consent unless authorized to do so under -

(1) §§303.401(d), 303.209(b)(1)(i) and (b)(1)(ii), and 303.211(b)(6)(ii)(A); or

(2) One of the exceptions enumerated in 34 CFR §99.31 (where applicable to IDEA), which are expressly adopted to apply to IDEA through this reference. In applying the exceptions in 34 CFR §99.31 to IDEA, Service Coordination agencies and EIS providers must also comply with the pertinent conditions in 34 CFR §§99.32, 99.33, 99.34, 99.35, 99.36, 99.38, and 99.39; in applying these provisions in 34 CFR §99 to part C, the reference to -

(i) 34 CFR §99.30 means 34 CFR §303.414(a);

(ii) "Education records" means early intervention records under 34 CFR §303.403(b);

(iii) "Educational" means early intervention;

(iv) "Educational agency or institution" means the participating agency under 34 CFR §303.404(c);

(v) "School officials and officials of another school or school system" means qualified personnel or service coordinators ;

(vi) “State and local educational authorities” means SCDHHS under 34 CFR §303.22; and

(vii) “Student” means child .

(c) SCDHHS must provide policies and procedures to be used when a parent refuses to provide consent under IDEA (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services), provided that those procedures do not override a parent's right to refuse consent under 34 CFR §303.420.

#### **34 CFR §303.415 Safeguards for records.**

(a) SCDHHS, Service Coordination agencies, and EIS providers must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.

(b) One official at SCDHHS, and each Service Coordination agency and EIS provider must assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under 34 CFR §§303.401 through 303.417 and 34 CFR §99.

(d) SCDHHS, and each Service Coordination agency, and EIS provider must maintain, for public inspection, a current listing of the names and positions of those employees within the Service Coordination agency, and EIS provider who may have access to personally identifiable information.

#### **34 CFR §303.416 Destruction of information in records.**

(a) SCDHHS, Service Coordination agencies, and EIS providers must inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide services to the child under IDEA, the General Education Provisions Act (GEPA) provisions in 20 U.S.C. 1232f, Education Department General Administrative Regulations (EDGAR), 34 CFR §76, and 2 CFR §200, as adopted in 2 CFR §3474.

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

#### **34 CFR §303.417 Enforcement of confidentiality requirements.**

SCDHHS must have in effect the policies and procedures, including sanctions and the right to file a complaint under 34 CFR §§303.432 through 303.434, that are used to ensure that its policies and procedures, consistent with 34 CFR §§303.401 through 303.417, are followed and that the requirements and federal regulations of IDEA are met.

### **PARENTAL CONSENT AND NOTICE 34 CFR §34 CFR § 303.420 – 303.422**

#### **34 CFR §303.420 Parental consent and ability to decline services.**

(a) SCDHHS must ensure parental consent is obtained before -

(1) Administering screening procedures under 34 CFR §303.320 that are used to determine whether a child is suspected of having a disability;

(2) All evaluations and assessments of a child are conducted under 34 CFR §303.321;

(3) Early intervention services are provided to the child ;

(4) Public benefits or insurance or private insurance is used if such consent is required under 34 CFR §303.520; and

(5) Disclosure of personally identifiable information consistent with 34 CFR §303.414.

(b) If a parent does not give consent under paragraph (a)(1), (a)(2), or (a)(3) above, SCDHHS must make reasonable efforts to ensure that the parent -

(1) Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and

(2) Understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.

(c) SCDHHS may not use the IDEA due process hearing procedures to challenge your refusal to provide any consent that is required under paragraph (a) of this section.

(d) As the parent of an infant or toddler with a disability, you -

- (1) Determine whether you, your child, or other family members will accept or decline any early intervention service at any time, in accordance with State law; and
- (2) May decline a service after first accepting it, without jeopardizing other early intervention services.

**34 CFR §303.421 Prior written notice and procedural safeguards notice.**

(a) General. Prior written notice must be provided to you a reasonable time before SCDHHS, a Service Coordination agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of your child, or the provision of early intervention services to you or your child.

(b) Content of notice. The notice must be in sufficient detail to inform you about -

- (1) The action that is being proposed or refused;
- (2) The reasons for taking the action; and
- (3) All procedural safeguards that are available under IDEA statute and regulations, including a description of mediation in 34 CFR §303.431, how to file a State complaint in 34 CFR §§303.432 through 303.434 and a due process complaint in the provisions adopted under 34 CFR §303.430(d), and any timelines under those procedures.

(c) Native language.

(1) The notice must be -

- (i) Written in language understandable to the general public; and
- (ii) Provided in the native language or other mode of communication, as defined in 34 CFR §303.25, used by the you, unless it is clearly not feasible to do so.

(2) If your native language or other mode of communication is not a written language, the Service Coordination agency or EIS provider must take steps to ensure that -

- (i) The notice is translated orally or by other means to the you in the you native language or other mode of communication;
- (ii) You understand the notice; and
- (iii) There is written evidence that the requirements of this paragraph have been met.

**34 CFR § 03.422 Surrogate parents.**

(a) General. SCDHHS must ensure that the rights of a child are protected when -

- (1) No parent (as defined in 34 CFR §303.27) can be identified;
- (2) SCDHHS or other public agency, after reasonable efforts, cannot locate a parent; or
- (3) The child is a ward of the State under the laws of that State.

(b) Duty of SCDHHS.

(1) The duty of SCDHHS, includes the assignment of an individual to act as a surrogate for the parent. This assignment process must include a method for -

- (i) Determining whether a child needs a surrogate parent; and
- (ii) Assigning a surrogate parent to the child.

(2) In implementing the provisions under IDEA for children who are wards of the State or placed in foster care, SCDHHS must consult with the public agency that has been assigned care of the child.

(c) Wards of the State. In the case of a child who is a ward of the State, the surrogate parent, instead of being appointed by SCDHHS under paragraph (b)(1) of this section, may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents.

(1) SCDHHS may select a surrogate parent in any way permitted under State law.

(2) SCDHHS must ensure that a person selected as a surrogate parent -

- (i) Is not an employee of SCDHHS, a Service Coordination agency or an EIS provider that provides early intervention services, education, care, or other services to you, your child, or other family members;
- (ii) Has no personal or professional interest that conflicts with the interest of your child; and
- (iii) Has knowledge and skills that ensure adequate representation of your child.

- (e) Non-employee requirement; compensation. A person who is otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of SCDHHS solely because he or she is paid by SCDHHS to serve as a surrogate parent.
- (f) Surrogate parent responsibilities. The surrogate parent has the same rights as a parent for all purposes .
- (g) Lead agency responsibility. SCDHHS must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

## **DISPUTE RESOLUTION OPTIONS 34 CFR §§303.430 – 303.417**

34 CFR §303.430 State dispute resolution options.

- (a) General. SCDHHS must provide written procedures for the timely administrative resolution of complaints through mediation, State complaint procedures, and due process hearing procedures, described in paragraphs (b) through (e) of this section.
- (b) Mediation. SCDHHS must make available to parties to disputes involving any matter the opportunity for mediation that meets the requirements in 34 CFR § 303.431.
- (c) State complaint procedures. SCDHHS must adopt written State complaint procedures to resolve any State complaints filed by any party regarding any violation of this part that meet the requirements in 34 CFR §§303.432 through 303.434.
- (d) Due process hearing procedures. SCDHHS must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in 34 CFR §303.421(a).
- (e) Status of a child during the pendency of a due process complaint.
  - (1) During the pendency of any proceeding involving a due process complaint under paragraph (d) of this section, unless SCDHHS and you otherwise agree, your child must continue to receive the appropriate early intervention services in the setting identified in the IFSP to which you have provided consent.
  - (2) If the due process complaint under paragraph (d) of this section involves an application for initial services under IDEA, your child must receive those services that are not in dispute.

### **Mediation**

34 CFR §303.431 Mediation.

- (a) General. SCDHHS must ensure that procedures are established and implemented to allow parties to disputes involving any matter , including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.
- (b) Requirements. The procedures must meet the following requirements:
  - (1) The procedures must ensure that the mediation process -
    - (i) Is voluntary on the part of the parties;
    - (ii) Is not used to deny or delay your right to a due process hearing, or to deny any other rights afforded under IDEA; and
    - (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
  - (2)
    - (i) SCDHHS must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.
    - (ii) SCDHHS must select mediators on a random, rotational, or other impartial basis.
  - (3) SCDHHS must bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.
  - (4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
  - (5) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that -
    - (i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
    - (ii) Is signed by both you and a representative of SCDHHS who has the authority to bind such agency.

(6) 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.

(7) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance .

(c) Impartiality of mediator.

(1) An individual who serves as a mediator-

(i) May not be an employee of SCDHHS, a Service Coordination agency, or an EIS provider that is involved in the provision of early intervention services or other services to the child; and

(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of SCDHHS solely because he or she is paid by SCDHHS serve as a mediator.

### **State Complaint Procedures**

34 CFR §303.432 Adoption of State complaint procedures.

(a) General. SCDHHS must adopt written procedures for -

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements in 34 CFR §303.434 by providing for the filing of a complaint with SCDHHS; and

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy (P&A) agencies, and other appropriate entities, the State procedures under 34 CFR §§303.432 through 303.434.

(b) Remedies for denial of appropriate services. In resolving a complaint in which SCDHHS has found a failure to provide appropriate services, SCDHHS, pursuant to its general supervisory authority under IDEA, must address -

(1) The failure to provide appropriate services, including corrective actions appropriate to address the needs of you or your child (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

34 CFR §303.433 Minimum State complaint procedures.

(a) Time limit; minimum procedures. SCDHHS must include in its complaint procedures a time limit of 60 days after a complaint is filed under 34 CFR §303.434 to -

(1) Carry out an independent on-site investigation, if SCDHHS 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 SCDHHS, Service Coordination agency, or EIS provider with an opportunity to respond to the complaint, including, at a minimum -

(i) At the discretion of SCDHHS, a proposal to resolve the complaint; and

(ii) An opportunity for you and SCDHHS, a Service Coordination agency, or EIS provider to voluntarily engage in mediation, consistent with 34 CFR §§303.430(b) and 303.431;

(4) Review all relevant information and make an independent determination as to whether SCDHHS, a Service Coordination agency, or an EIS provider is violating a requirement of IDEA; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains -

(i) Findings of fact and conclusions; and

(ii) The reasons for SCDHHS's final decision.

(b) Time extension; final decision; implementation. SCDHHS's procedures described in paragraph (a) of this section also must -

(1) Permit an extension of the time limit under paragraph (a) of this section only if -

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) You (or individual or organization, if mediation is available to the individual or organization under State procedures) and SCDHHS, a Service Coordination agency or an EIS provider involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section; and

(2) Include procedures for effective implementation of SCDHHS's final decision, if needed, including -



- (i) Technical assistance activities;
  - (ii) Negotiations; and
  - (iii) Corrective actions to achieve compliance.
- (c) Complaints filed under this section and due process hearings under 34 CFR §303.430(d).
- (1) If a written complaint is received that is also the subject of a due process hearing under 34 CFR §303.430(d), or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.
- (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties -
- (i) The due process hearing decision is binding on that issue; and
  - (ii) SCDHHS must inform the complainant to that effect.
- (3) A complaint alleging a SCDHHS's, a Service Coordination agency's or an EIS provider's failure to implement a due process hearing decision must be resolved by SCDHHS.

**34 CFR § 303.434 Filing a complaint.**

- (a) An organization or individual may file a signed written complaint under the procedures described in 34 CFR §§ 303.432 and 303.433. (b) The complaint must include -
- (1) A statement that SCDHHS, a Service Coordination agency or an EIS provider has violated a requirement of part C of the Act;
  - (2) The facts on which the statement is based;
  - (3) The signature and contact information for the complainant; and
  - (4) If alleging violations with respect to a specific child -
    - (i) The name and address of the residence of the child;
    - (ii) The name of the EIS provider serving the child;
    - (iii) A description of the nature of the problem of the child, including facts relating to the problem; and
    - (iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- (c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 34 CFR §303.432.
- (d) The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with SCDHHS.

**States That Choose To Adopt the Part C Due Process Hearing Procedures Under Section 639 of the Act**

**34 CFR §303.435 Appointment of an impartial due process hearing officer.**

- (a) Qualifications and duties. Whenever a due process complaint is received under 34 CFR §303.430(d), a due process hearing officer must be appointed to implement the complaint resolution process as described in IDEA statute and regulations. The person must -
- (1) Have knowledge about the provisions of IDEA and the needs of, and early intervention services available for you and your child; and
  - (2) Perform the following duties:
    - (i)
      - (A) Listen to the presentation of relevant viewpoints about the due process complaint.
      - (B) Examine all information relevant to the issues.
      - (C) Seek to reach a timely resolution of the due process complaint.
    - (ii) Provide a record of the proceedings, including a written decision.
- (b) Definition of impartial.
- (1) Impartial means that the due process hearing officer appointed to implement the due process hearing -
    - (i) Is not an employee of SCDHHS, a Service Coordination agency or an EIS provider involved in the provision of early intervention services or care of the child; and

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

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

34 CFR §303.436 Parental rights in due process hearing proceedings.

(a) General. SCDHHS must ensure that the parents of a child referred BabyNet are afforded the rights in paragraph (b) of this section in the due process hearing carried out under 34 CFR §303.430(d).

(b) Rights. If involved in a due process hearing, you have the right to -

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for infants and toddlers with disabilities;

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

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

(4) Obtain a written or electronic verbatim transcription of the hearing at no cost to you; and

(5) Receive a written copy of the findings of fact and decisions at no cost to you.

34 CFR §303.437 Convenience of hearings and timelines.

(a) Any due process hearing conducted as described in IDEA statute and regulations must be carried out at a time and place that is reasonably convenient to the parents.

(b) SCDHHS must ensure that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required under IDEA statute and regulations is completed and a written decision mailed to each of the parties.

(c) A hearing officer may grant specific extensions of time beyond the period set out in paragraph (b) of this section at the request of either party.

34 CFR §303.438 Civil action.

Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in State or Federal court under §639(a)(1) of IDEA.