

Chapter 2: Parental Rights

The Procedural Safeguards, incorporated within the Individuals with Disabilities Education Act (IDEA) are a critical component of the early intervention system and protect the rights of eligible children and their families participating in early intervention services. In Missouri, the First Steps system refers to these safeguards as “Parental Rights.”



Parental Rights

As explained in the Missouri First Steps Parental Rights Statement, families have the right to:



- 1) A timely, multidisciplinary evaluation;
- 2) If eligible, an Individualized Family Service Plan (IFSP) and early intervention services;
- 3) Provide consent for initial evaluation and initiation of early intervention services, and accept or decline evaluations, assessments and services;
- 4) Expect that the confidentiality of personally-identifiable information will be protected;
- 5) Be notified when destruction of records will occur, and have the opportunity to obtain them when no longer needed to provide early intervention services;
- 6) Prior written notice before a change is proposed or refused regarding the identification, evaluation, placement or early intervention services;
- 7) Review early intervention records and request the correction of those records;
- 8) Administrative and judicial processes to resolve complaints (i.e., child complaints, mediation, and due process);
- 9) Consult an advocate or attorney in any and all dealings with the early intervention system; and
- 10) Educational Surrogate Services, if applicable.

SPOE Responsibilities to First Steps Families

The SPOE has the responsibility to ensure that:

- Families are informed of their rights;
- Parental rights are implemented throughout the early intervention process;
- Families are involved in the decision-making process regarding services for their child; and
- Families understand how to identify and resolve problems.

Parental rights are best understood when explained to families within the process of participation. At appropriate times during the process, parents should be informed, both verbally and in writing, of their parental rights. For example, Service Coordinators should:

- a) Provide and explain the Parental Rights Statement with families at the initial intake visit when discussing the early intervention system;
- b) Explain the evaluation/assessment process when scheduling and planning the evaluation for eligibility determination;
- c) Obtain the family's consent for initial evaluation/assessment;
- d) Discuss the parent's right to review their child's early intervention record, and explain how to request changes to the record;
- e) Obtain family participation and written consent to implement the services and activities set forth in the IFSP; and
- f) Actively involve families in the review and evaluation of the IFSP and provide them with prior written notice when changes are made.



Provision of a copy of the Parental Rights

Protecting the rights of eligible children and their families are guaranteed by law. State and federal regulations require that a copy of the Parental Rights Statement must be provided each time the parent is given a written Notice of Action (see 34 CFR 303.403).



Because the information in parental rights is complex, it is recommended that both an oral and written explanation of these be provided at multiple points in the family's involvement in First Steps. The times when it is recommended that both an oral and written explanation be provided are:

- When the family has its initial contact with the early intervention system;
- When the initial evaluation and assessment is proposed or refused;*
- When the eligibility determination is made;
- When initial services are proposed*
- When the IFSP is being developed or reviewed; and,
- When a change in outcomes, services or placement (the location where services will be provided) is proposed or refused.*

****A written Notice of Action accompanied by a copy of the Parental Rights Statement MUST be provided at these times. A verbal explanation should accompany the written statement. This should be provided in the natural flow of conversation and in the context of emphasizing parental rights, including the right to disagree and to make their own decisions based upon accurate and factual information.***



Parental Access to the Early Intervention Record

Parents must be permitted to inspect and review any or all portions of the electronic or hard copy record relating to their child as a part of the First Steps program. The SPOE, or any other agency maintaining such records, must allow parents access without unnecessary delay. Parents cannot be denied access by the public agency due to physical limitations or geographic locations. Service Coordinators **MUST** provide assistance to parents wishing to review their child's record.



If an Early Intervention (EI) record or documentation includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information. The identifying information on other children/individuals must be redacted, or blacked out, prior to inspection.

Parents also have the right to request an explanation of the records or to request an amendment to the records. If a family believes that the information contained in their child's EI record is inaccurate, misleading or discriminatory in some manner, they may request in writing that this information be either removed or rewritten to more accurately reflect their child. Inspecting and reviewing records includes a right to:



- a) A response from the SPOE to reasonable requests for explanations and interpretations of the records;
- b) A request that the SPOE provide copies of the records containing the information, if failure to provide those copies would effectively prevent the parent/legal guardian from exercising the right to inspect and review the records; and

- c) A representative of the parent/legal guardian to inspect and review the records.

The SPOE may presume that the parent has the authority to inspect and review records relating to his or her child unless the SPOE has been advised that the parent/legal guardian does not have the authority under state law. In instances of non-custodial parents, the SPOE assumes that the non-custodial parent has access rights to the child's EI record and is a participant in the IFSP development unless advised otherwise in writing by court order.

Confidentiality of personally identifiable information

Each SPOE must protect the confidentiality of personally identifiable information. Therefore, the SPOE will:

- 1) Appoint an individual to be responsible for ensuring the confidentiality of any personally identifiable information;
- 2) Provide training to all employees about the policies and procedures that govern personally identifiable information; and
- 3) Maintain a current list of the names and positions of those employees within the SPOE who have access to personally identifiable information.

The official EI record is maintained at the local SPOE administrative office. In order to adequately ensure that these records are protected, and the appropriate provisions put in place, the SPOE has the responsibility to monitor those having access to this information. Individuals with current, signed Release of Information (ROI) in a child's EI record may access the information detailed on the ROI form, including obtaining a copy of the information. The staff at the SPOE should verify that a current ROI exists and the extent to which



information may be shared prior to opening the full EI record to the individual named on the form.

Individuals who are part of the First Steps system, such as DESE employees who are conducting compliance monitoring or providers selected by the family to provide EI services, may access the EI record without parental consent. All individuals who access the file, with the exception of designated SPOE staff, must sign and document the Access Log.



The protection of confidentiality also extends to members of the child's family who are not their legal guardian. In the event that the SPOE staff or Service Coordinator need to communicate directly with family members other than the child's legal guardian(s), a signed ROI must be obtained from the legal guardian. This requirement also applies to those instances when a child is in foster care, or is a ward of the State. When necessary, the Educational Surrogate would sign the release.

Destruction of Records

Three (3) years after a child leaves the First Steps System, and the personally identifiable information that has been collected, maintained or used by the SPOE is no longer needed to provide EI services, the SPOE is required to inform the family that the child's records will be destroyed unless the parent requests the records in writing. These records would include:



- The IFSP
- Evaluation reports
- Test protocols
- Notifications of meetings
- Notices of Action
- Other personally identifiable information

The permanent record which includes the child's name and address, phone number, and enrollment

information may be maintained by the SPOE without time limits.

The Destruction of Records (DOR) Checklist and Guidelines include the steps necessary to document the action taken by the SPOE to locate the family before destroying the First Steps file:

- Mail a “Notification of Destruction of EI Record” letter and “Request for EI Records” form to the last known address of the family, giving 30 days to sign and return the request form. If the completed request form is signed and mailed/faxed back to the SPOE, the SPOE will send EI records to the parent. If the parent fails to respond within 30 days, the checklist and a copy of the notification letter should be placed in a permanent record at the SPOE. The child’s EI record can be destroyed.
- If the notification letter and request form is returned by the US Postal System with a new address, a new letter should be prepared and mailed to the new address, giving another 30 days for the parent to respond. If the completed request form is mailed/faxed back to the SPOE, the SPOE will send the EI records to the parent’s new address. If the parent fails to respond within 30 days, the checklist and a copy of the notification letter should be placed in a permanent record at the SPOE. The child’s EI record can be destroyed.
- If the notification letter and request form is returned by the US Postal System as undeliverable, the checklist and returned letter/envelope shall be placed in a permanent record at the SPOE. The child’s EI record can be destroyed.



NOTE: The SPOE must maintain child complaint documentation/information for 10 years, and due process information/documentation for 15 years.

State Complaint System

Missouri's complaint system includes the following three components:

I. Child Complaint

If an individual or organization believes the First Steps system has violated a state or federal Part C IDEA regulation, they may file a signed, written child complaint with DESE. The complaint must include a statement of the violation(s), and the facts on which the statement is based. The violation must have occurred not more than one year prior to the date the child complaint was received, unless a longer period (currently not more than three years prior to the date received) is reasonable because it is an ongoing violation of state and federal regulations, or because the complainant is requesting a corrective action (e.g., reimbursement, corrective action, or compensatory services).



Child complaints are investigated and a written final decision, addressing each allegation in the complaint with findings of fact and conclusions, is provided to the complainant and SPOE within 60 days.

II. Due Process

Families have the right to resolve concerns about their child's evaluation and assessment(s), determination of eligibility/ineligibility, and provision of early intervention services. If agreement cannot be reached by the IFSP team or First Steps system, a parent may initiate a due process hearing with a written request to DESE.



Within 30 calendar days of receiving the parent's request, a hearing will be conducted by an impartial hearing officer who will review the parent's concerns, listen to the involved parties, and issue a written decision of facts and findings. Parents may be represented by legal counsel at the due process hearing, present evidence, and cross-examine witnesses. If DESE or the parent disagrees with the hearing officer's final decision, either party has a right to appeal the decision to a state or federal district court. During these proceedings, the child will continue to receive the early intervention services that were being provided at the time due process was initiated; or, if the due process involves initial services, the child will receive any services that are not being disputed.

III. Mediation

Parents are offered the opportunity to resolve their concerns prior to initiating due process, or after due process has been requested, if both parties agree to mediation. Mediation is voluntary, free of cost, and does not take away a parent's right to a due process hearing. Both parties must mutually agree upon an impartial mediator who is qualified and trained in mediation techniques and knowledgeable in special education laws and regulations. The mediator will schedule the mediation session at a mutually agreed upon time and location within 15 days of the request. No more than three people can accompany each party to the mediation session, unless both parties agree to more, and attorneys are not allowed to participate or attend. Because all discussions are confidential and cannot be used later as evidence in a due process hearing or civil action, both parties may be asked to sign a confidentiality pledge. Any agreement reached will be set forth in a written mediation agreement.



Educational Surrogate

In the rare case that a child is a ward of the state or does not have an identified parent, guardian, foster parent, or person acting as a parent, the SPOE must request that DESE assign an Educational Surrogate to represent the child in all educational matters.

Each SPOE must comply with the DESE procedures for determining whether a child needs an Educational Surrogate. This information must be widely distributed and known to all service providers including service coordinators. Any person may advise a responsible public agency that an infant or toddler with a disability within its jurisdiction may be in need of a person to act as an Educational Surrogate. This information is given to the SPOE in their county or directly to the DESE.

Within thirty (30) days of being aware that a child with a disability living within its jurisdiction may need an Educational Surrogate, the SPOE will make a determination as to whether an Educational Surrogate should be appointed. A request to the Division of Special Education of DESE for the appointment of a surrogate must be made within ten (10) days of that determination. The Division will appoint within thirty (30) days, a person to act as an Educational Surrogate. The Division maintains a registry of trained educational surrogates from which they select individuals for appointment. If an Educational Surrogate dies, resigns, or is removed, a replacement will be appointed within fifteen (15) days.



System Point of Entry (SPOE) Responsibilities Regarding Educational Surrogates

Each SPOE will:

- a) Designate a staff member who will be responsible for overseeing the Educational Surrogate program in their agency. Unless notified otherwise, DESE will assume that the Educational Surrogate contact person is the same as the SPOE contact person;
- b) Complete and return to DESE a “Determination of Need for Surrogate Appointment” form for each child believed to be eligible for receiving an Educational Surrogate appointment;
- c) Assist DESE in recruiting Educational Surrogate volunteers and submit their names and addresses to DESE;
- d) Be available to assist DESE with local Educational Surrogate training; and,
- e) Complete and return to DESE an “Educational Surrogate Evaluation” form for each surrogate serving in the SPOE region.



Additional information about the appointment of Educational Surrogates is contained in the Missouri Part C State Plan and Federal Regulations (34 CFR 303.406).

Children in the care and custody of the State of Missouri

In Missouri, a child’s foster parent acts as a parent. Foster parents may access family training through First Steps in order to understand and fulfill their roles and responsibilities appropriately. However, at times there may be a need for an Educational Surrogate.

The Educational Surrogate and MO Department of Social Services-Children’s Division caseworker

must coordinate and work together for the overall benefit of the child. It is imperative that two-way communication occur between the Educational Surrogate and the Children's Division caseworker regarding IFSP activities and events, and that both parties are kept fully informed of all relevant activities and commitments made on behalf of the eligible child.

The activities and obligations of the Educational Surrogate are restricted to the planning and delivery of early intervention services under First Steps for the eligible child only. If a child is under the care or supervision of the Department of Social Services (DSS), the Educational Surrogate **should not** be confused with the assigned DSS-Children's Division caseworker. While the Children's Division caseworker is responsible under the laws of the State for the obligations of the DSS (and responsible for the child's physical well being), the DSS-Children's Division caseworker **cannot** serve as the child's educational decision-maker or Educational Surrogate for the purposes of First Steps.